CONFERENCE ON THE LIMITATION OF ARMAMENT AND PROBLEMS OF THE PACIFIC

By James Brown Scott

Editor-in-Chief

A conference of a group of Powers heretofore known as the Principal Allied and Associated Powers (the British Empire, France, Italy, Japan and the United States), to discuss the limitation of armament, and of these Powers, and Belgium, China, the Netherlands and Portugal, to consider Pacific and Far Eastern problems, will open in the City of Washington on November 11, 1921.

Armament alone would not have fully justified the call of a conference. Armament does not exist for itself, and it is not an end. It is a means to an end, the end being the determination of one or more Powers to make the will of the state or states having armament prevail.

The general interest of the Powers, and the special interest of some, centers in the Pacific. Hence, Secretary of State Hughes, speaking for and by the direction of President Harding, added in his first note to the Principal Allied and Associated Powers:

> It is manifest that the question of limitation of armament has a close relation to Pacific and Far Eastern problems, and the President has suggested that the Powers especially interested in these problems should undertake in connection with this conference the consideration of all matters bearing upon their solution with a view to reaching a common understanding with respect to principles and policies in the Far East.

This meant that China was to be invited to the Conference, and it was so stated.

The four Powers thus sounded by Secretary Hughes were willing to attend the proposed conference. China was more than willing. They were therefore invited to confer with the United States and one another, on armament, and all with China on the problems of the Pacific. Belgium, the Netherlands and Portugal let it be known that they had interests in the conference which could not be overlooked by themselves, and should not be by the conferees. No one who has not forgotten the exciting month of August, 1914, would deny to Belgium a very present interest in the armament of its neighbors, although some people questioned its right to discuss the limitation of armament of the military nations. And Holland and Portugal are Far Eastern Powers. By common consent these three Powers were invited to take part in the discussion of the Pacific problems.

Therefore, on August 11th, Secretary Hughes invited the Principal Allied and Associated Powers to a conference on both subjects, and China on Pacific problems, to which were added, on October 4th, Belgium, the Netherlands and Portugal to send representatives to Washington to confer, on November 11, 1921, on the subjects contained in an agenda agreed to by the principal participants, and made public on September 21st:

LIMITATION OF ARMAMENT.

One. Limitation of naval armament, under which shall be discussed
- (a) Basis of limitation
- (b) Extent
- (c) Fulfillment.

Two. Rules for control of new agencies of warfare.

Three. Limitation of land armament.

PACIFIC AND FAR EASTERN QUESTIONS.

One. Questions relating to China.
First: Principles to be applied.
Second: Application.
Subjects:
- (a) Territorial integrity
- (b) Administrative integrity
- (c) Open door,—equality of commercial and industrial opportunity.
- (d) Concessions, monopolies or preferential economic privileges.
- (e) Development of railways, including plans relating to Chinese Eastern Railway.
- (f) Preferential railroad rates.
- (g) Status of existing commitments.

Two. Siberia.
(similar headings)

Three. Mandated Islands.
(unless questions earlier settled)
Electrical communications in the Pacific.

Under the heading of "Status of existing commitments" it is expected that opportunity will be afforded to consider and to reach an understanding with respect to unsettled questions involving the nature and scope of commitments under which claims of rights may hereafter be asserted.

Why was the conference called? The invitation sent to the Principal Allied and Associated Powers for the armament side, and to China for the Pacific phase of the conference, make the purpose of the United States abundantly clear. The notes are so succinct and pointed that they are their own best summary.

The invitation of August 11th to the four big Powers was thus worded:

Productive labor is staggering under an economic burden too heavy to be borne unless the present vast public expenditures are greatly reduced. It is idle to look for stability, or the assurance of social justice, or the security of peace, while wasteful and unproductive outlays deprive effort of its just reward and defeat the reasonable expectation

of progress. The enormous disbursements in the rivalries of armaments manifestly constitute the greater part of the encumbrance upon enterprise and national prosperity; and avoidable or extravagant expense of this nature is not only without economic justification but is a constant menace to the peace of the world rather than an assurance of its preservation. Yet there would seem to be no ground to expect the halting of these increasing outlays unless the Powers most largely concerned find a satisfactory basis for an agreement to effect their limitation. The time is believed to be opportune for these Powers to approach this subject directly and in conference; and while, in the discussion of limitation of armament, the question of naval armament may naturally have first place, it has been thought best not to exclude questions pertaining to other armament to the end that all practicable measures of relief may have appropriate consideration. It may also be found advisable to formulate proposals by which in the interest of humanity the use of new agencies of warfare may be suitably controlled.

It is, however, quite clear that there can be no final assurance of the peace of the world in the absence of the desire for peace, and the prospect of reduced armaments is not a hopeful one unless this desire finds expression in a practical effort to remove causes of misunderstanding and to seek ground for agreement as to principles and their application. It is the earnest wish of this Government that through an interchange of views with the facilities afforded by a conference, it may be possible to find a solution of Pacific and Far Eastern problems, of unquestioned importance at this time, that is, such common understandings with respect to matters which have been and are of international concern as may serve to promote enduring friendship among our peoples.

It is not the purpose of this Government to attempt to define the scope of the discussion in relation to the Pacific and Far East, but rather to leave this to be the subject of suggestions to be exchanged before the meeting of the conference, in the expectation that the spirit of friendship and a cordial appreciation of the importance of the elimination of sources of controversy, will govern the final decision.

To China the invitation consisted of the two paragraphs dealing with the problems of the Pacific, omitting the paragraph devoted to the burden of armaments.

For the conference on Pacific and Far Eastern questions there are precedents, for interested nations have often come together to discuss and have reached agreements on their common interests, and although the agreements have been temporary and have given way to other and subsequent agreements, peace has often been preserved through them. At least war has been averted because of them. May it be so in the present case!

For the conference of the nations on the limitation of armament there is but one precedent. The first of the two Hague Conferences was called in 1898, for this purpose. The message of the Czar of all the Russias,—for it was he who sounded the note of alarm in 1898, just as the President of the United States takes the initiative in 1921—speaks of "a possible reduction of the excessive armaments which weigh upon all nations." It suggests that the then moment was "very favorable for seeking, by means of international discussion, the most effective means of insuring to all peoples the benefits of a real and lasting peace, and above all of limiting the progressive development of existing armaments."

The message then states the appalling consequences of the progressive increase of armament, and the duty of the nations to call a halt:

The ever-increasing financial charges strike and paralyze public prosperity at its source.

The intellectual and physical strength of the nations, their labor and capital, are for the most part diverted from their natural application and unproductively consumed.

Hundreds of millions are spent in acquiring terrible engines of destruction, which though to-day regarded as the last word of science are destined to-morrow to lose all value in consequence of some fresh discovery in the same field.

National culture, economic progress, and the production of wealth are either paralyzed or perverted in their development. Moreover, in proportion as the armaments of each Power increase, so do they less and less attain the object aimed at by the Governments.

Economic crises, due in great part to the system of amassing armaments to the point of exhaustion, and the continual danger which lurks in this accumulation of war material, are transforming the armed peace of our days into a crushing burden which the peoples have more and more difficulty in bearing. It appears evident, then, that if this state of affairs be prolonged, it will inevitably lead to the very cataclysm which it is desired to avert, and the impending horrors of which are fearful to every human thought.

In checking these increasing armaments and in seeking the means of averting the calamities which threaten the entire world lies the supreme duty to-day resting upon all states.[1]

After consulting the Powers accredited to St. Petersburg, which were alone asked to be represented at the conference, a circular note was sent by the Russian Minister for Foreign Affairs, enlarging the scope by including the pacific settlement of disputes between the nations. This note thus stated the subjects to be submitted for international discussion, in so far as they related to armaments:

1. An understanding stipulating the non-argumentation, for a term to be agreed upon, of the present effective armed land and sea forces, as well as the war budgets pertaining to them; preliminary study of the ways in which even a reduction of the aforesaid effectives and budgets could be realized in the future;

2. Interdiction of the employment in armies and fleets of new firearms of every description and of new explosives, as well as powder more powerful than the kinds used at present, both for guns and cannons;

3. Limitation of the use in field fighting of explosives of a formidable power, such as are now in use, and prohibitions of the discharge of any kind of projectile or explosive from balloons or by similar means;

4. Prohibition of the use in naval battles of submarine or diving torpedo boats, or of other engines of destruction of the same nature; agreement not to construct in the future war-ships armed with rams;

5. Adaptation to naval war of the stipulations of the Geneva Convention of 1864, on the base of the additional articles of 1868;

6. Neutralization for the same reason, of boats or launches employed in the rescue of the shipwrecked during or after naval battles;

7. Revision of the declaration concerning the laws and customs of war elaborated in 1874 by the Conference of Brussels, and not yet ratified.[2]

[1] Documents relating to the Program of the First Hague Conference laid before the Conference by the Netherland Government. Translation published by the Carnegie Endowment for International Peace (1921), p. 1.

[2] *Ibid.*, p. 3.

The Hague was chosen as the seat of the conference. The delegates of twenty-six states met there on May 18, and adjourned on July 27, 1899.

The discussions on armament and its limitation were long and animated, but no agreement was reached on the subject which had brought the delegates together. The laws and customs of warfare were codified, the principles of the Geneva Convention were extended to naval warfare, a pacific settlement convention was adopted. In so far as the limitation of armament was concerned, the conference failed, but the by-products, so to speak, more than justified its calling.

Secretary Hughes has taken no chances. The burdens of armament and the means of its limitation are to be discussed, and an agreement reached, if possible, which is the supreme duty today as it was then, and has been for centuries. The delegates are not to go away empty-handed. The problems of the Pacific are many and varied, and the delegates may succeed there, even if their labors in the more thorny field of armament may disappoint the public, which overlooks the difficulties in the way in its eagerness to reach the desired goal.

It is difficult to get nations to agree to limit their respective armaments. It would be difficult, judging from the past, to have them agree to any control or supervision of their actions by commissions or commissioners. An incident related by the late Alfred H. Fried in his Manual of the Peace Movement, concerning Frederick the Great and the Chancellor of Austria, is not without interest:

> It was for the first time in history that a European Government presented to another Government a proposal for the decrease of armaments when soon after the conclusion of the Seven Years' War the Austrian Chancellor, Prince Kaunitz, made such a proposal to the Prussian ambassador in Vienna. Kaunitz said that similarly to the Monasteries the large standing armies which the Powers maintain are injurious to the human race and in the course of time would threaten it with "complete destruction." An end should now be made to this "sad outlook," this "internal war" which the princes were waging against each other in times of peace, and the means for doing so should be disarmament. He said that he had often considered the difficulties opposing the execution of so beneficial a work and that according to his opinion the greatest obstacle was the determination of the number of troops for the individual Powers. He, therefore, proposed that Prussia and Austria should take the recently concluded Hubertsburg Peace as a basis, dismiss three-fourths of the soldiers who were at that time under the colors, and for the purpose of controlling one another allow commissioners to be present at the review of troops of the other Power.
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> When the king received this report of his ambassador he was of the opinion that the proposal of Kaunitz had been dictated merely by the then prevailing financial embarrassment of the Austrian monarchy, since it was difficult for the latter to maintain all the troops which it had under the colors at that time. Confidentially he continued that he could not consider this proposal for disarmament because in a crisis the Austrians could assemble their army more quickly than he. In case Kaunitz should return to his proposal, Frederick finally instructed his ambassador to declare, in a fitting manner, that this project seemed to him almost to resemble that of the Abbé St. Piérre and that

the Powers would hardly be able to come to an agreement on the number of troops to be maintained.

In 1769 Emperor Joseph II again referred to the proposal of Kaunitz upon the occasion of his meeting with Frederick in Neisse. He was of the opinion that the number of troops in the army should be decreased in order to alleviate the burdens of the people, but the king again refused.

Thus, the first attempt at an agreement concerning armaments failed.[3]

There have, however, been two agreements—one between Great Britain and the United States, the other between Argentina and Chile. The first was in 1817, and stands intact; the second was of yesterday, and has expired—not having been prolonged or renewed.

Great Britain and the United States agreed that:

The naval force to be maintained upon the American lakes by his Majesty and the Government of the United States shall henceforth be confined to the following vessels on each side, that is—

On Lake Ontario, to one vessel not exceeding one hundred tons burden, and armed with one eighteen-pound cannon.

On the Upper lakes, to two vessels not exceeding like burden each, and armed with like force.

On the waters of Lake Champlain, to one vessel not exceeding like burden, and armed with like force.

All other armed vessels on these lakes shall be forthwith dismantled, and no other vessels of war shall be there built or armed.

If either party should be hereafter desirous of annulling this stipulation, and should give notice to that effect to the other party, it shall cease to be binding after the expiration of six months from the date of such notice.

The naval force so to be limited shall be restricted to such services as will, in no respect, interfere with the proper duties of the armed vessels of the other party.[4]

The Rush-Bagot agreement still stands, a tribute to the wisdom of the statesmen who proposed it at the end of the War of 1812 between their respective countries, and an example of good faith between nations, and its possibilities.

The material articles of the convention between Chile and the Argentine Republic respecting the limitation of naval armaments are as follows:

Article 1. With the view of removing all motive for uneasiness or resentment in either country, the Governments of Chile and the Argentine Republic desist from acquiring the vessels of war which they have in construction, and from henceforth making new acquisitions.

Both Governments agree, moreover, to reduce their respective fleets, for which object

[3] "Frederick the Great and the Idea of Peace," from the still unpublished Part II (second edition) of Alfred H. Fried's Handbuch der Friedensbewegung. *Die Friedens-Warte*, January, 1912, v. 14, p. 1.

[4] Agreement effected by exchange of notes concerning naval force on the Great Lakes. Proclaimed by the President, April 28, 1818. Malloy's Treaties, Conventions, etc., between the United States and Other Powers, 1776-1909, Washington, 1910, v. i, p. 628.

they will continue to exert themselves until they arrive at an understanding which shall establish a just balance (of strength) between the said fleets. This reduction shall take place within one year, counting from the date of exchange of ratification of the present convention.

Article 2. The two Governments bind themselves not to increase, without previous notice, their naval armaments during five years; the one intending to increase them shall give the other eighteen months' notice. It is understood that all armaments for the fortification of the coasts and ports are excluded from this agreement, and any floating machine destined exclusively for the defense of these, such as submarines, etc., can be acquired.

Article 3. The two signatory parties shall not be at liberty to part with any vessels, in consequence of this convention, in favor of countries having questions pending with one or the other.

Article 4. In order to facilitate the transfer of pending contracts, both Governments bind themselves to prolong for two months the term stipulated for the delivery of the vessels in construction, for which purpose they will give the necessary instructions immediately this convention has been signed.[5]

In addition to the Hague precedent of 1899, there exists what may be called a mandate imposed by the Congress of the United States upon the President in office at the conclusion of peace. In the Act making appropriations for the naval service of the United States, approved August 29, 1916,[6] the policy of the United States is declared to be "to adjust and settle its international disputes through mediation or arbitration, to the end that war may be honorably avoided." Recognizing the connection between armament and war, the Act went on to say that this country "looks with apprehension and disfavor upon a general increase of armament throughout the world." The difficulty of the problem, however, was not hidden from the Congress, which proceeded immediately to say that the United States "realizes that no single nation can disarm, and that without a common agreement upon the subject every considerable Power must maintain a relative standing in military strength." Then comes the mandate. "In view of the premises, the President is authorized and requested to invite, at an appropriate time, not later than the close of the war in Europe,"—our war ended with the treaties of 1921 with Germany, Austria and Hungary—"all the great Governments of the world to send representatives to a conference . . . to consider the question of disarmament and submit their recommendation to their respective Governments for approval."

The approaching conference is big with possibilities. The limitation of armament; the settlement of Pacific problems; and perhaps an agreement on a workable association of nations, for does not the invitation say that "there can be no final assurance of the peace of the world in the absence of the desire for peace, and the prospect of reduced armaments is not a

[5] The Proceedings of the Hague Peace Conferences. Translations of Official Texts, The Conference of 1907, vol. I, Plenary Meetings of the Conference. Published by The Carnegie Endowment for International Peace. New York, 1920, p. 120.

[6] U. S. Statutes at Large, Vol. 39, p. 618.

hopeful one *unless this desire finds expression in a practical effort to remove causes of misunderstanding and to seek ground for agreement as to principles and their application.''*

In any event, it is a heartening spectacle to see a return to the old order of things; a conference of nations called in peace to consider the ways in which peace may be conserved and war averted, and meeting in peace and in an atmosphere of peace.

It is assuredly the part of wisdom to take counsel of the immediate past to apply to the problems of the present the principles which have proved efficacious in the past; to build upon the foundations of the past with a defter hand and in a more generous and chastened spirit. The temple of peace is still in the distance; and the approach to it runs through conferences like the two which have already assembled at The Hague.

THE UNITED STATES AND THE LEAGUE OF NEUTRALS OF 1780

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The idea of a league of nations is one with which the United States has been familiar since the very beginning of its history. The form in which it first appeared to this country was in the Armed Neutrality of 1780. The purpose of this league, which has sometimes been called the League of Neutrals, was the protection of neutral trade. Having its origin at the court of Catherine II, Empress of Russia, the Armed Neutrality set forth a body of rules respecting the freedom of commerce in time of war which must prove highly favorable to the United States when that country, in a future conflict, should change its status from that of a belligerent to that of a neutral. It is not surprising, therefore, that the inclusion of the United States among the membership of the league which the Tsarina was forming to enforce these principles was not without its advocates.

The United States had already occupied a most advanced position with respect to the maritime rights of neutrals. To maintain free intercourse with the countries of Europe amid their inevitably recurring wars was recognized to be a primary interest on this side of the Atlantic. Clear distinctions between the maritime rights of neutrals and those of belligerents were asserted from the outset and adhered to with remarkable consistency, despite many temptations to turn aside for temporary advantage.[1]

At the beginning of the American Revolution the colonists appreciated that to cope successfully with the maritime power of Great Britain they must resort to reprisals on the sea. As early as November, 1775, the Continental Congress recommended to the legislatures of the colonies the establishment of courts to determine cases of capture. From the decisions of these tribunals, "appeals were to be allowed to Congress, or to such persons as they may appoint for the trial of appeals."[2]

Courts were established in all of the States and, except in New York

[1] For a study of the American attitude towards capture at sea, see H. S. Quigley, this Journal, Vol. 11, pp. 820-837.

[2] Jour. Cont. Cong., III, pp. 373-374; J. C. Bancroft Davis, Federal Courts before the Constitution, 131 U. S. Reports, Appendix, p. xxi; Jameson, Essays in the Constitutional History of the United States, p. 11.

where the maritime counties remained in the hands of the enemy, continued active throughout the war.[3] But in many of the States the right of appeal was curtailed by statute. The legislatures of New Hampshire and Massachusetts insisted that only in cases in which the capture was made by an armed vessel fitted out at the expense of the United States should an appeal be allowed to Congress. In all other cases the right of appeal lay to the supreme court of the State.[4] This jealousy on the part of the States would have led to unfortunate results had not the acts been annulled to permit a right of appeal to Congress in all cases of maritime capture.[5] As a matter of fact, Congress found cause to complain that the curtailment of the right of appeal "has a very dangerous tendency to interrupt the peace, safety, and union of the United States, and is in direct violation of the resolve of Congress which grants an appeal in all cases.[6] To quiet any possible dissatisfaction with the character of the appellate tribunal, a permanent court of appeals in cases of capture was established by Congress on January 15, 1780.[7]

Not less unsatisfactory than the limitation upon the right of appeal was the establishment of trial by jury in the prize courts. If the former militated against uniformity in the administration of the law, the latter often resulted in positive denial of justice. A superficial glance at the records of the cases decided in the Pennsylvania court in 1776 will show how willing patriotic juries were to condemn to the captors when there was the slightest evidence that the ship or cargo was hostile.[8] But "the temper of the people was such and so greatly were they enraged at the corruption of former admiralty courts, that a court of this species without a jury would have met their universal disapprobation."[9]

It was not long before the inability or the refusal of the juries to pass fairly and intelligently upon the facts in prize cases attracted the attention of Congress. In January, 1780, it was resolved "that it be recommended to the States to authorize the courts of admiralty therein . . . to decide without a jury in all cases where the civil law, the law of nations, and

[3] In 1776, when a court could not be conveniently convened in New Jersey, the legislature by statute proceeded to condemn a vessel "said to be British property," which had been captured by the militia. Laws of N. J., 1776, p. 17. The New York Provincial Congress, on June 28, 1776, appointed a committee to take charge of prizes until condemnation. Am. Archives, Ser. 4, VI, p. 1435.

[4] Davis, 131 U. S. Reports, Appendix, p. xxiii; Penhallow *v.* Doane, 3 Dallas 54.

[5] Acts and Resolves of the Province of Mass. Bay, V, p. 1077.

[6] Jour. Cont. Cong., XII, p. 1023.

[7] *Ibid.*, XVI, pp. 61-64.

[8] MSS. in the office of the Clerk of the U. S. District Court at Philadelphia. The case of McAroy *v.* Thistle and Cargo is especially in point. The judgment of the State court was promptly reversed by Congress. The case of Griffin *v.* Sloop George, condemned in the New Jersey court in 1778, was of the same character. Jennings *v.* Carson, 4 Cranch 2.

[9] Austin, Life of Elbridge Gerry, I, p. 313.

the resolutions of Congress are the rules of their proceeding and adjudication."[10] Pennsylvania led the States in the repeal of the statutes authorizing trial by jury in the prize courts, enacting on March 8, 1780, a new admiralty law which left the determination of such causes to the judge.[11]

Obviously the interests of neutral trade would have been best served by a strict adherence to the principle that "free ships make free goods." This rule had been growing in favor since the middle of the seventeenth century, especially among those nations having small naval forces. But in 1776 the principle was one of conventional stipulation, and not a rule of international law.[12] Nevertheless, Congress in its draft of a plan for treaties to be made with neutral Powers included the principle that "free ships shall make free goods," together with the converse proposition, that "enemy's ships shall make enemy's goods." That there were limits beyond which the principle that the flag covers the cargo would not be urged is evident from the marginal note by James Wilson: "This to be obtained if possible; but not to be insisted upon so as to break off the treaty."[13]

The rule, however, suited the interest of France, with whom the United States was to frame its first treaty. The two maxims became Articles XIV and XXIII of the treaty of amity and commerce, concluded on February 6, 1778.[14] They were proposed six months later to Holland, and thereafter formed a rule which the United States sought to incorporate in its conventional agreements.

The willingness of Congress to adopt rules which would relieve neutrals from many of the annoyances of visit and search could safely be carried out only through treaty stipulations. The adherence of Great Britain to the rule of the *Consolato del Mare,* that enemy's goods in neutral vessels might be seized while neutral goods on board vessels of the enemy should go free, was an obstacle to the adoption generally of the less rigorous principle. In the resolutions of Congress and the decisions of the prize courts of the States, neutrals continued to receive the same treatment accorded them in the admiralty courts of Great Britain.

[10] Jour. Cont. Cong., XVI, p. 62.

[11] Hopkinson: Miscellaneous Essays and Occasional Writings, III, p. 24.

[12] Manning: Law of Nations (ed. Amos), pp. 325-337; Phillimore: Commentaries (3rd ed.), III, p. 335 ff. In 1752, Frederick II of Prussia, in the Silesian Loan Controversy, contended that the principle of "free ships, free goods," must be admitted as a rule of international law, but this was successfully controverted by the British commissioners. Martens, Causes célèbres, II, pp. 1-88. The best discussion of this subject is to be found in Ward, Relative Rights and Duties of Belligerent and Neutral Powers in Maritime Affairs (London, 1801), pp. 1-172. Practically all the later English writers have simply restated the position occupied by Ward. For an attempt to establish the principles of the Armed Neutrality as rules of international law, see Barton, Freedom of Navigation (Philadelphia, 1802).

[13] Jour. Cont. Cong., V, pp. 581, 585.

[14] Martens, Recueil des Traites, II, pp. 594, 597.

Early in 1776 privateering was authorized by Congress, and on October 14, 1777, it was resolved "that any vessel or cargo, the property of any British subject, . . . brought into the harbors of the United States . . . be adjudged lawful prize." [15] Privateering flourished, and there were few days upon which the judges of the courts of admiralty were idle. In less than two years, Timothy Pickering in Massachusetts condemned over 150 vessels, and the convenient harbor of the Delaware saw many captured vessels drop their unwilling anchors to await the action of Judge Ross at Philadelphia.[16]

Although the legitimate interests of neutrals commanded the respect of Congress, the captains of privateers on occasions transgressed the law. The career of Captain Cunningham was notorious on account of his irregularities. In 1777 he seems to have contented himself with the capture of British vessels.[17] But in 1778 he molested a number of Portuguese vessels, nearly embroiling the United States with the court of Lisbon.[18] In November of the same year, in command of the *Revenge*, he captured a Swedish ship bound from London to Teneriffe with a cargo of Spanish property. This action gave great offense to Spain, and Captain Cunningham was forbidden entrance to the ports of the kingdom. Arthur Lee assured the Spanish ambassador at Paris in this instance "that, upon its being made to appear in the admiralty courts in America that the property is neutral, it will be restored, with such damages as are just." [19]

These derogations from the instructions of Congress met with the immediate disapproval of the American Government. The captains of armed vessels were warned to respect the rights of neutrals, and to conform to the requirements of the laws of nations and the resolutions of Congress.[20] The same warning was repeated in a proclamation of May 2, 1780, after further protests on the part of neutrals whose commerce had suffered illegal interference at the hands of privateers.[21]

In the State admiralty courts, the decisions reflect the earnest desire to adjudicate in accordance with the rules of international law. The rule that neutral vessels fallen into the hands of the enemy do not lose their innocent character upon recapture was upheld in the Pennsylvania court and was approved by Congress.[22] In 1780, the rule that neutral goods in

[15] Jour. Cont. Cong., IV, p. 253; IX, p. 802.

[16] Pickering, Life of Timothy Pickering, I, p. 79; Penna. Archives, VII, p. 558.

[17] Diplomatic Correspondence of the Am. Revolution (ed. Wharton), II, p. 322; Annual Register (1778), p. 37.

[18] Dip. Corr. Am. Rev. (ed. Wharton), II, p. 784.

[19] *Ibid.*, II, p. 840.

[20] See instructions of the American Commissioners, Nov. 21, 1777 (Dip. Corr. Am. Rev. (ed. Wharton), II, p. 425), and proclamation of Congress, May 9, 1778 (Jour. Cont. Cong., XI, p. 486).

[21] Jour. Cont. Cong., XVI, pp. 406-408.

[22] Geddes *v.* The Golden Rose, Hopkinson, III, p. 19. The decision in this case ran counter to that of the Massachusetts court in Tucker *v.* LeVern and Cargo, DeValnais

enemy's vessels should go free was recognized by Judge Hopkinson, having already been declared by a committee of Congress in the previous year.[23] At the same time, it had become the established practice to condemn enemy's goods when found in neutral vessels, upon paying the freight to the carrier.[24] The doctrines of the United States with respect to neutral commerce were thus on a parity with those of Great Britain when Catherine II, on February 28, 1780, issued her proclamation declaring the rights of neutrals upon the sea.

The Empress of Russia desired to free neutral trade from the interference of the belligerents to which her nationals had so frequently been subjected. Her declaration sought to overturn the "Rule of 1756" and secure for neutrals the freedom of navigation even to the ports and upon the coasts of the belligerents; it restricted the category of contraband to munitions and the essential instruments of war; it asserted as an established rule of international law the principle that "free ships make free goods," and set forth a new theory of blockade.[25] Chief interest centers on the second proposition, that "free ships shall make free goods." This principle had already been asserted in some quarters, apart from conventional agree-

Claimant. In the latter case, the jury condemned a French vessel which had been captured by the British and from them recaptured by the libellant. DeValnais appealed to the Court of Appeals in Cases of Capture, where the judgment of the lower court was reversed. The case will be found among the MSS. of the Court of Appeals in the office of the Clerk of the United States Supreme Court. On the subject of recaptures, see G. F. de Martens, Essay on Privateers and Captures, Eng. trans. (London, 1801), pp. 107-214.

[23] Walker *v.* Albion, Hopkinson, III, p. 42; Penna. Archives, VIII, p. 491. On July 15, 1779, Francis Hopkinson became judge of the admiralty court in Pennsylvania following the death of Judge Ross. In the case of Cleaveland *v.* Ship Valenciano, Congress affirmed the decree of the Massachusetts court condemning the ship as hostile, but freed a part of the cargo owned by Spanish subjects. See cases in the office of the Clerk of the U. S. Supreme Court.

[24] For an example, see case of Cabot *v.* Neustra Senora de Merced among the MSS. of the Court of Appeals. The admiralty court in Massachusetts freed the Spanish-owned vessel, but condemned the British property. Upon appeal, Congress affirmed the decision of the State court, November 6, 1779. See also Dip. Corr. Am. Rev. (ed. Wharton), VII, p. 63; Franklin, Works (ed. Bigelow), III, pp. 742, 801.

[25] Martens, Recueil, III, p. 158; Bergbohm, Die Bewaffnete Neutralität, pp. 30-50. The treaties of Utrecht, 1713, and numerous other conventions had asserted the maxims "free ships make free goods" and "enemy's ships make enemy's goods." (Calvo, IV, p. 414; Wheaton, History, p. 106 ff.; Atherley-Jones, Commerce in War, pp. 284-298). But among Christian Powers the first of these principles had never been accepted unless accompanied by the second. (Manning, Law of Nations (ed. Amos), p. 335.) Catherine II is therefore supposed to have asserted a principle entirely novel. (Manning, p. 335; Phillimore (3rd ed.), III, p. 302 ff.; Bowles, Declaration of Paris, pp. 77-79; Lampredi, Du Commerce des Neutres en Temps de Guerre, French trans., Italian ed. 1788 (Paris, 1802); Kent, Commentaries, I, pp. 126, 131). On the other hand, Kleen, Lois et Usages de la Neutralité, pp. 20-21, holds that the Armed Neutrality intended simply to renew the Utrecht principle and to establish the doctrine that the quality of the vessel determines the quality of the cargo.

ment, and had been extended to all neutrals as a privilege by the French ordinance of July 26, 1778.[26] But what Catherine II claimed as a right of neutrals under international law, the prize courts of both Great Britain and the United States had denied in favor of the older principle of the *Consolato del Mare.*

The proclamation of the Tsarina found a ready response among the Powers of northern Europe, and its principles formed the basis of the Armed Neutrality of 1780. Within eighteen months Denmark, Sweden, Holland, Prussia and Austria had given their adhesion to the declaration.[27] France and Spain gave their warm approval.[28] Great Britain alone remained firm in her determination to follow the rules of international law by which her conduct had hitherto been guided.[29]

The neutrals of northern Europe began to arm for the protection of their commerce in accordance with the principles to which they had subscribed. This action was already known to the American commissioners in France when, in May, 1780, Captain Dowlin of the American privateer *Black Prince,* sailed into the harbor of Cherbourg, bringing as prize the Dutch ship *Flora* laden with a cargo of British property. Franklin, called upon to decide the fate of the vessel and her cargo, was uncertain what to do. He wrote to Dumas, the American agent at The Hague, for advice. Dumas advised that the vessel and her cargo be freed, but pointed out that the condemnation of the cargo was entirely possible in the absence of any treaty with The Netherlands stipulating for the freedom of enemy's goods in neutral bottoms.[30]

After consultation with John Adams and Francis Dana, Franklin decided to free the *Flora,* but to condemn the cargo, paying the Dutch captain the freight.[31] At the same time, he gave orders to the American privateers cruising in European waters

> not to bring in any more Dutch vessels, although charged with enemy's goods, unless contraband. All the neutral States of Europe seem at present disposed to change what had before been deemed the law of nations, to wit, that an enemy's property may be taken wherever found; and to establish a rule, that free ships shall make free goods. This rule is itself so reasonable, and of a nature to be so beneficial to mankind, that I cannot but wish it may become general. And I make no doubt that the Congress will agree to it, in as full an extent as France and Spain. In the meantime, and until I have received their orders on the subject, it is my inten-

[26] Recueil des Anciennes Lois Françaises, XXV, pp. 366-370.

[27] Martens, Recueil, II, pp. 103, 110, 117, 130, 171. Portugal, on July 13, 1782, and the Two Sicilies, on February 10, 1783, accepted the principles of the Armed Neutrality. Martens, Recueil, II, p. 208; III, p. 274.

[28] *Ibid.*, pp. 162, 164.

[29] *Ibid.*, III, p. 160; Annual Register (1780), p. 349.

[30] Franklin MSS., May, 1780. Library Am. Philos. Society.

[31] Dip. Corr. Am. Rev. (ed. Wharton), III, pp. 682, 742, 769.

tion to condemn no more English goods found in Dutch vessels, unless contraband. . . .[32]

Nevertheless, the decision of Franklin condemning the cargo of the *Flora* did not pass unnoticed at Versailles. Vergennes, the foreign minister of Louis XVI, was unwilling that the American ally should pursue a policy different from that of France, when to do so was to stir the wrath of those with whom he would be on friendly terms.[33] Upon being assured that Franklin had acted upon the law as settled in America, Vergennes urged upon Congress the adoption of the same rules as the French upon the subject. Writing to Luzerne, the French representative at Philadelphia, he said:

It is all the more important that the Americans conform their maritime regulations to our system, which is that of neutral Powers, since they will thereby conciliate themselves with these same Powers (the league of the Armed Neutrality), and it is all the more necessary that Congress give promptly to its privateers orders which shall be similar to those which have permitted them to stop neutral vessels laden with English goods, which have given rise to complaints against the United States, and not less damaging to their interests.[34]

The accession of the United States to the principles of the Armed Neutrality had already been urged by the American Commissioners in Europe. John Adams pointed out that such action would be hurtful only to England and would be especially helpful to the United States.[35] The benevolent principles of the neutral league were so well suited to the temper of Franklin that he repeatedly suggested to Congress that they be adopted as a basis of instructions to American cruisers.[36]

Congress was prompt to act upon the advice of Vergennes. On September 26, 1780, Samuel Adams reported a resolution according to the principles of the Russian declaration with slight modifications. But action on the proposition was postponed, and a substitute was introduced which bound the United States unreservedly to the acceptance of the rules of the Armed Neutrality.[37] In the latter form the resolution passed Congress on October 5th, and the Board of Admiralty was ordered to "prepare and report instructions for the commanders of armed vessels commissioned by the United States, conformable to the principles contained in the declaration of the Empress of all the Russias on the rights of neutral vessels."[38]

[32] Dip. Corr. Am. Rev. (ed. Wharton), III, p. 740; Franklin, Works (ed. Bigelow), VII, p. 62.

[33] Dip. Corr. Am. Rev. (ed. Wharton), VI, p. 801; Fauchille, La Diplomatie Française et la Ligue des Neutres, pp. 394-400.

[34] Doniol, Histoire de la participation de la France a l'établissement des États Unis d'Amerique, IV, p. 438.

[35] Dip. Corr. Am. Rev. (ed. Wharton), III, pp. 612, 632.

[36] Franklin, Works (ed. Bigelow), VII, p. 107.

[37] Jour. Cont. Cong., XVIII, pp. 864-867.

[38] *Ibid.*, XVIII, p. 905.

In compliance with the act of Congress, the Board of Admiralty presented additional regulations, which were adopted on November 27th. By these the freedom of neutrals to navigate on the high seas or upon the coasts of the United States was assured; commanders of all public and private armed ships were forbidden to "seize or capture any effects belonging to the subjects of belligerent Powers on board neutral vessels, excepting contraband goods;" and the term contraband was to be restricted to such instruments of war as were enumerated in the treaty of amity and commerce of February 6, 1778, between the United States and France. These instructions were to serve as a rule of proceedings in the courts on the legality of prizes, and all deviations therefrom were to be punished by the loss of the offender's commission and the payment of damages to the party aggrieved.[39] To complete the legislation on this subject, Congress on April 7, 1781, issued a proclamation reaffirming these rules.[40]

Scarcely had Congress established these new rules of maritime law when occasion was presented for their enforcement. On August 31, 1780, the privateer *Mars* captured the Portuguese brig *Nossa Senhora de Leiramonte*, bound from St. Jube to Cork with a cargo of salt. From papers on board the brig the ownership of the cargo was found to be British. The prize was first brought to Nantes, where the American agent declared it should go free.[41] But since he had no authority to order its release, he was obliged to allow the captain of the *Mars* to send the brig to Boston. This was done because "the cargo would not have been valuable in Europe, but would be in great demand in America."[42]

The Portuguese ambassador at Paris complained to Franklin, who advised the prosecution of the case in the American courts. Writing to Congress on December 3d, Franklin said:

> I hope the Congress may think fit to take some notice of this affair, and not only to forward a speedy decision, but give orders to our cruisers not to meddle with neutral ships for the future, it being a practice apt to produce ill blood, and contrary to the spirit of the new league which is approved by all Europe.[43]

On May 26, 1781, a formal protest was laid before Congress in behalf of the Portuguese owner. This was referred to the Board of Admiralty which reported:

> That the proper mode for the memorialist to obtain redress . . . is by prosecution in due course of law; and that a letter should be written by the President to the supreme executive of the State of Massachusetts . . . recommending to the said executive to give all such countenance,

[39] Jour. Cont. Cong., XVIII, pp. 1097, 1098.

[40] *Ibid.*, XIX, p. 261.

[41] Franklin MSS., Oct. 17, 1780. Library Univ. of Pennsylvania.

[42] Allen, Naval Hist. Am. Rev., pp. 540-542.

[43] Dip. Corr. Am. Rev. (ed. Wharton), IV, p. 180.

protection, and assistance to the memorialist in his attempts to obtain legal satisfaction. . . .[44]

The new principle adopted by Congress with respect to neutral commerce was enforced by the Court of Appeals in the case of Miller *v.* Resolution and Cargo, decided in August, 1781.[45] The case involved an appeal from the admiralty court in Pennsylvania, where the ship had been acquitted but the cargo condemned. The facts are somewhat complicated, but indicate that the *Resolution* was a Dutch vessel carrying a cargo owned by British subjects of the island of Dominica. It had been captured by a British cruiser, war having been declared between Great Britain and Holland, and from the British it fell into the hands of the libellants.

The court, ignoring the state of war between the Dutch and the British, declared the original capture to have been illegal. Although the vessel had been in the hands of the enemy for more than twenty-four hours, the capture and occupation had not changed it into British property and thereby made it lawful prize. With respect to the cargo, the court said:

> Let it be admitted that this is British property. The resolution of Congress of October, 1780, adopting the principles of the Armed Neutrality, produced the ordinance of 7th April, 1781, prior to the capture in this case. By the 4th instruction, the effects of a belligerent on neutral vessels, except contraband, are to be free from capture. This case comes expressly within the fourth instruction; the ship is certainly within the predicament of neutral property, and the cargo is the property of subjects of a belligerent Power.

The decree of the lower court was, therefore, confirmed with regard to the ship; and with regard to the cargo it was reversed.[46]

The resolution of Congress of October 5, 1780, contemplated not merely the adoption of the principles set forth in the declaration of Catherine II, but aimed also to establish the United States as a party to the league which was to enforce these principles. By the close of 1780 the neutrals of northern Europe were fairly well organized for the protection of their commerce. These Powers had mutually agreed to defend their cause in common and jointly, so that an attack directed against any one of them, through some violation of the right of neutrals, would bring simultaneously

[44] Jour. Cont. Cong., XX, p. 542; see also case of Babcock *v.* Brigantine Brunette, in MSS. of Court of Appeals, Aug. 4, 1781.

[45] 2 Dallas 1.

[46] Upon a rehearing in December, 1781, the court took into consideration the fact that a state of war existed, at the time of capture, between Great Britain and Holland. But upon the new evidence, the court adhered to its first decision, except with regard to a part of the cargo, which was condemned on account of irregularities in the bills of lading and letters of advice respecting those particular articles. 2 Dallas 19; Hopkinson, III, p. 70.

the others to its defense.[47] With this league of neutrals the United States, being a belligerent, could clearly have no place. But Congress was under the belief that a meeting of all the Powers of Europe was about to be held to give sanction to the Russian declaration as a part of international law. Instructions were therefore given the American ministers in Europe to subscribe to the Armed Neutrality in behalf of their government, if they should be invited to do so.[48] John Adams, on March 8, 1781, transmitted to the representatives of the neutral Powers at The Hague the resolution of Congress. But to Prince Gallitzin, the Russian Minister, he specifically requested the admission of the United States as a party to the league.[49]

In order to gain the good will of Catherine II, Congress determined on December 15, 1780, to appoint a minister to the Court of Russia.[50] The choice fell upon Francis Dana, who was then in Paris as the secretary to John Adams. The two great objects of his negotiation, Mr. Dana was informed, were to engage Catherine II "to favor and support the sovereignty and independence of the United States," and to secure "the admission of the United States as a party to the convention for maintaining the freedom of the seas."[51]

The achievement of these objects must have seemed almost impossible from the outset. To Catherine II, the Americans were rebels. Panin, her Minister of Foreign Affairs, had assured the British in 1778, "that so long as the British treated the Americans as rebels, the Court of Petersburg would look upon them as a people not yet entitled to recognition."[52] Prince Gallitzin expressed his pleasure when informed of the instructions given by Franklin in conformity with the Russian declaration, but at no time did the Empress change in her attitude toward the United States.[53] Although France and Holland recognized American independence, the Russian Vice Chancellor, Count Ostermann, wrote Prince Gallitzin on May 6, 1782,

> That Her Imperial Majesty wishes that there shall be no demonstration . . . that she approves this course. You will not receive or make any visits whatsoever to Mr. Adams, or any other person accredited on the part of the colonies which have separated from Great Britain.[54]

Francis Dana found his mission to St. Petersburg to be in vain. The United States could not, while a belligerent, become a party to the Armed

[47] Kleen, Lois et Usages de la Neutralité, I, p. 21 ff.

[48] Jour. Cont. Cong., XVIII, p. 905; Dip. Corr. Am. Rev. (ed. Wharton), IV, p. 80.

[49] Dip. Corr. Am. Rev. (ed. Wharton), V, pp. 274-276.

[50] Jour. Cont. Cong., XVIII, pp. 1155, 1164, 1166.

[51] *Ibid.*, XVIII, pp. 1168-1173.

[52] Bancroft, Hist. of the U. S., X, p. 257.

[53] Franklin MSS., June 25, 1780. Library Am. Philos. Society.

[54] MS. Memoir on the relations between the Imperial Court of Russia and the United States of America in the reign of Catherine II. Library of Congress.

Neutrality, and Catherine II refused to receive him so long as the independence of the colonies had not the recognition of Great Britain.[55]

The United States, although shut out from the league of the Armed Neutrality, continued to remain faithful to its principles. The American commissioners abroad, as soon as the preliminaries of the treaty of peace had been agreed upon, urged the adoption of the rules of the Russian declaration in the definitive treaty of peace.[56] Franklin was hopeful that the complete immunity of private property from capture might be agreed upon.[57] The Dutch Government early in 1783 proposed to John Adams that the United States accede to the Armed Neutrality as already concluded, or to enter into a similar negotiation with France, Spain and Holland.[58] This suggestion met with the approval of the American ministers at Paris, but since Francis Dana was the only person having full power to sign such treaty, they were obliged to refer the matter to him.[59]

In the meantime, the accession of the United States to the league of the Armed Neutrality became the subject of debate in Congress. Mr. Dana had written that the United States could not become a party to the confederation while a belligerent. But the convention was designed only for the duration of the war. Although it might be continued between the parties for a longer period, Mr. Dana found that he would be obliged to make "presents" amounting to five thousand pounds sterling to various ministers of the Russian court for the liberty of acceding to the agreement.[60]

On May 21, 1783, Hamilton rose in Congress and declared that the treaties of peace completely altered the situation, and the primary object of the mission to Russia was entirely removed. He thought it was unnecessary even to conclude a commercial treaty with the Court of St. Petersburg, and moved that Mr. Dana be permitted to return home. He was supported by Madison, who pointed out that, although Congress approved the principles of the Armed Neutrality, it would be "unwise to become a party to a confederacy which might thereafter complicate the interests of the United States with the politics of Europe."[61] The same view was taken by the Secretary for Foreign Affairs, Mr. Livingston, in his report to Congress on June 3d. Mr. Livingston hoped that the principles of the Armed Neutrality might be embodied in the definitive treaty of peace,

[55] For a study of the Dana mission, see Hildt, Early Diplomatic Negotiations of the United States with Russia. J. H. U. Studies, XXV, pp. 257-278. The correspondence will be found under appropriate dates in Dip. Corr. Am. Rev. (ed. Wharton).

[56] Adams, Works, VIII, p. 15; Dip. Corr. Am. Rev. (ed. Wharton), VI, p. 191.

[57] Works (ed. Bigelow), VIII, p. 245.

[58] Adams, Works, VIII, pp. 29, 42.

[59] *Ibid.*, VIII, pp. 30, 40, 43.

[60] *Ibid.*, VIII, p. 51; Dip. Corr. Am. Rev. (ed. Wharton), VI, p. 403.

[61] Dip. Corr. Am. Rev. (ed. Wharton), VI, p. 437; Jour. Cont. Cong., May 21-22, 1783. I am indebted to Miss Emily B. Mitchell of the Division of MSS., Library of Congress, for permission to use the galley proofs of the volumes of the Jour. Cont. Cong. for 1783.

since the concurrence of Great Britain ought to be secured. But, he thought, no convention of this kind ought to be signed unless France and Spain were also parties thereto.[62]

Congress finally resolved, on June 12, 1783, upon a clear distinction between the principles of the Armed Neutrality and a confederation for their enforcement. The resolution set forth:

> The true interest of the States requires that they should be as little as possible entangled in the politics and controversies of European nations. But inasmuch as the liberal principles on which the said confederacy was established are conceived to be, in general, favorable to the interests of nations, and particularly to those of the United States, and ought, in that view, to be promoted by the latter as far as will consist with their fundamental policy,
> *Resolved*, That the ministers plenipotentiary of these United States for negotiating a peace be, and they are hereby, instructed, in case they should comprise in the definitive treaty any stipulations amounting to a recognition of the rights of neutral nations, to avoid accompanying them by any engagements which shall oblige the contracting parties to support those stipulations by arms.[63]

In the instructions to the peace commissioners, this resolution was embodied, where it stood as the settled policy of the United States.[64]

That the United States should have escaped from participation in a confederacy of this sort was fortunate. All the members of the Armed Neutrality of 1780 abandoned, upon the very next opportunity of their becoming belligerents, the creed which they had sought to enforce by arms when neutrals.[65] The rules to which they had subscribed represented an interest rather than a principle of right for which they were willing permanently to contend. Whatever advantage might have been gained for American commerce by membership in the league would not have compensated for the political embarrassments of such an alliance.

The principles of the Armed Neutrality survived, but they were recognized in conventional agreements and not as rules of international law. Under this guise, the rule that "free ships shall make free goods" found a warm exponent in the United States. In every treaty negotiation closely following the peace of 1783, the representatives of this government urged the rule, and in all but one secured its adoption.

[62] Dip. Corr. Am. Rev. (ed. Wharton), VI, pp. 473-474.
[63] *Ibid.*, VI, p. 482.
[64] *Ibid.*, VI, p. 717.
[65] Phillimore (3rd ed.), III, p. 339.

THE PRINCIPLE OF EQUILIBRIUM AND THE PRESENT PERIOD *

By Tor Hugo Wistrand

I.

Politics require principles. When it is a question on the one hand of acquiring a position, and on the other hand of defending it, the opposed interests seek bases upon which they can rest. The sovereignties feel the necessity of invoking the authority of a principle which seems to draw its force from considerations superior to those that can inspire the political pretensions of a particular state. An appeal is made to a common interest the supposed existence of which is taken for granted—namely, that of maintaining the peace and good relations among the states—and it is presented in a definite formula, the principle of equilibrium.

But this formula has no fixed significance in a juridical sense, its invocation being due to the fact that it claims to be the means of realizing that common interest and of expressing in a sense a natural law. In appealing to this principle, the state has *ipso facto* recognized that the ambitions of expansion can be justified only to the extent that they blend with a common interest, or at least are not opposed thereto. In order to utilize it, we must depart from the conception of the isolated state, abandon the national basis and place ourselves on the international plane.

The principle of equilibrium necessarily imposes upon the ambitious sovereignties a motive of fear and might consequently result in a certain respect for the other states. But it is precisely in this regard for the others that the foundation of international law lies. By constituting a motive of fear for the states whose ambitious designs are likely to disturb the peace, the principle of equilibrium could form a veritable sanction of international law. But, as in internal law, it does not suffice to make the rules govern, to stipulate penalties for the offenses, without maintaining public order by moral convictions of the individual; it is likewise necessary in the field of international law to emphasize considerations of a moral order. Keeping in mind this twofold aspect, we shall examine first the historical development of the principle of equilibrium and thereupon arrive at an analysis of its character.

* The present article reproduces in substance a paper read before the diplomatic section of the *Ecole des Sciences Politiques* of Paris. It was written at the suggestion of M. Dupuis, to whom the writer owes the most valuable suggestions.—Author.

Translated from the French by Dr. Edwin H. Zeydel, of Washington, D. C.

The form in which the principle of equilibrium has played a part during long periods before 1914 was determined under the influence of those ideas which signalize the end of the Middle Ages, the Renaissance and the Reformation. The Renaissance increased the authority of the sovereigns. The Roman ideas concerning their power helped to encourage them to act unscrupulously. The ancient conception of sovereignty justified the most sinister ambitions. The dissolution of the empire of Charlemagne had done away with the notion of political unity, offering the most favorable opportunity to the aspirations of the princes. The Reformation completely shattered the already greatly shaken spiritual unity; in conferring the religious authority upon the princes, it created a pretext for political enterprises. The disappearance of the power of the Pope was necessarily bound to signify an increase of the authority of the princes, who were freed from every regard of a religious order. The theories of the Renaissance with respect to sovereignty, on the one hand, and the absence of every moral principle, on the other, had to lead inevitably to a state of anarchy. It is natural that under such conditions the weakest sovereignties could not subsist without uniting, and that they had to seek to create in their united forces a motive of fear for anyone who wished to attack the integrity of one of them. These efforts were likewise necessary for the very life of the state, for in the absence of every obstacle which morality might offer, every sovereignty knows that the disappearance of its neighbor to the advantage of a stronger state will menace it. Thus during this period of anarchy the principle of equilibrium appeared to be the means most apt to safeguard the existence of the state, and the appeal made to it seemed to be due to an instinctive sentiment rather than to formulated reasons.

The immense empire of Charles V was bound necessarily to arouse fears in the other Powers. The struggle between the ruling house of France and that of Hapsburg is the most remarkable historical manifestation of this fact. In a certain sense, above these Powers there was a third Power engaged in watching over the balance of power, namely, England. There remains no doubt that the diplomacy of Henry VIII was consciously inspired by this principle. The interest of England was best realized in a balance of power between France and Austria. As a matter of fact, English politics have never abandoned the thought of Henry VIII but have applied it in the foreign relations of England with the force of a tradition. In the struggle against the menacing power of Austria, Henry IV pursued the political designs of Francis I, and Richelieu supported them under changed conditions.

The Peace of Westphalia is decisive for the part which the principle of equilibrium has played in European politics. This has a twofold aspect. Since none of the adversaries could get the upper hand, the house of Austria, which had been a menace to the other Powers of Europe, did not represent an imminent danger for the future. Thus there was realized

through the treaty a condition corresponding to the idea of equilibrium. But, moreover, it is clear that this condition could not subsist without the support of the same principle. In causing the absolute collapse of every conception of unity, the Peace of Westphalia created a Europe composed of independent sovereignties, and although their ambitions were not nurtured by Machiavellian theories, moral ideas were not capable of guiding them. It follows from this that the only guarantee against the abuse of force by a state whose political designs threatened others was to be found in a combination of Powers. In this sense the Peace of Westphalia furnished the basis of a policy inspired by the principle of equilibrium.

However, it soon appeared that the conception, as it was realized in the Peace of Westphalia, could not guarantee a pacific development. As yet equilibrium is only a formula without any moral basis. The brutal operations attendant upon the organization of the German sovereignties disclose its true character. The ambitions of Louis XIV brought about the formation of the coalitions aiming at the maintenance of the equilibrium which was threatened by him, but when subsequently the menace appeared in another quarter, namely in the prospect of the reëstablishment of the empire of Charles V, we witness England withdrawing from the coalition in the name of the same principle. In a word, it was due to the policy of England that neither Austria nor France could acquire a predominance which would have resulted from a union with Spain, and that the Treaty of Utrecht could thus reëstablish the equilibrium.

In this new state of affairs it was no longer a question of maintaining a balance between two continental Powers—Austria and France. It was necessary to take the claims of Russia into account, and the problem which the principle of equilibrium is called upon to solve is considerably complicated. None of the Powers was in a position of being able to dominate the others, but none was ready to abandon its ambitious designs. In order to satisfy these wishes and at the same time the desire for a balance of power between the Powers, the logical conclusion must be found in the partition of the weak states. It is thus from this point of view that the principle of equilibrium is interpreted in the partitions of Poland, an interpretation completed and perfected by the idea of a partition in consonance with the existing state of strength of the Powers. However, the idea of partition caused the maintenance of the equilibrium to be forgotten, so that Napoleon, taking advantage of the territorial cupidity of the coalitionists, could succeed in destroying it. It required the crushing of Prussia and Austria and the threat against Russia to make it clear that the European equilibrium was shaken. Thus the earlier conception of the principle was revived.

The discussions of the Congress of Vienna show in a very plain manner the complicated questions which the analysis of the principle raises. The allies sought to reëstablish the equilibrium but at the same time to reduce France to its former limits. But how were these two matters to be recon-

ciled, granted that the material increase of the allied forces would have to allow France a relative increase? Thus the discussion introduces into the conception of equilibrium elements likely to complicate it. It was imperative to take into account the qualities of the state which do not necessarily correspond to powers of aggression. This thesis, upheld by France, was not admitted in its consequences. The principle continues to serve the egotistical ambitions of every state which makes its claims under this vague formula. Only France, being in a certain sense disinterested, tried to introduce the moral element. It is easy to understand the importance of this new conception, introduced by Talleyrand. If the principle of equilibrium could not guarantee peace, if it served in an odious manner to the detriment of the weak states, the reason was because the moral idea had not been introduced into it. In order to construct a just equilibrium, no purely arithmetical methods must be applied, as the principle is not a mechanism which can make an abstract question of the various qualities of each population and its moral force. These ideas, which brought considerable complication into the work of the Congress of Vienna, convinced M. de Metternich, at least with regard to the necessity of taking account of the nature of the populations in the territories in dispute. The expression of this conviction will be seen in the appointment of a statistical commission for estimating the territories from the point of view of their population.

Certainly it can not be denied that these efforts helped to render the Treaty of Vienna more durable. But the moral considerations invoked by Talleyrand could not readily penetrate the minds of the diplomats. The latter, occupied in the first place by material questions relating to the strength of their respective states, were not attached to the wishes of the populations. It became a new task for European politics to determine and regulate the influence which this element could have upon equilibrium. Thus it was with regard to the question of Greece and with regard to the problem of Belgium. In the former it appeared that the equilibrium could be adapted to the national claims and in the latter it could be reëstablished by virtue of the neutralization of the Belgian State.

The policy of Napoleon III was characterized by the same efforts, perhaps to the detriment of France. During the Crimean War the principle of equilibrium was invoked against Russian aggression. The balance was restored without conquest or partition and in harmony with certain national claims. In his Italian policy, Napoleon III attempted to carry out the French point of view of equilibrium against the Italian power, created with his aid by national forces. The reunion of Savoy and of the county of Nice with France shows the principles which directed his policy. Since their application against Prussia could not have so happy an issue, Napoleon sought to conceal the failure of his policy under a new form of equilibrium. "The Emperor does not believe that the greatness of a country depends upon the weakening of the peoples which surround it and he sees a true

equilibrium only in the fulfilled wishes of the nations of Europe.[1] However, it was evident that the balance was inclining to the side of Prussia, a fact which in 1870 presented itself in a manner threatening for France. The Hohenzollern candidature placed France in a position which her policy had constantly sought to avoid in the name of equilibrium. The principle invoked in the declaration of war furnishes the best example of the flexibility of the conception: Europe did not consider the equilibrium to be in danger.

After the defeat of 1870, France tried to reëstablish the balance of power by allying herself with Russia. It was made clear in 1914 that this combination could not suffice to insure peace. It required the entrance into the war of the Powers outside of Europe in order to create a balance against Germany. Thus the war has given to the principle a world aspect, the first stage of which was the Anglo-Japanese Alliance in 1902. Without doubt, extra-European questions have for a long time had a great influence upon the problem of equilibrium in Europe. But they have simply been the elements of the problem. Now the question arises as to whether the principle will be able to satisfy the requirements of a world policy, in view of the necessity of taking into account the extra-European Powers as independent elements. These considerations blend with another point of view, namely, that it is necessary to seek a means which will secure the general peace in a more happy manner.

II.

The tremendous complexity which the conception of equilibrium presents follows from its historical development. We must determine its character by studying the principal characteristics which have resulted from the examination made of it. Is the principle itself a rule of law? Has it any importance at all for international law?

We have shown how the principle of equilibrium has been invoked in very different situations. The constructions made in its name present an infinite variety. It has permitted conquests or partitions, depending upon the circumstances. At times it has shown itself favorable to national claims. It can not furnish identical solutions in identical cases. This lack of stability must deprive it of any pretensions that it may have of being a juridical rule.

However, from another point of view it possesses a certain importance. Its vague contents make negotiations possible. No one can refuse to avail himself of it as a basis, for over against the claims of his adversary in the name of equilibrium, he will always be able to set up a contrary opinion founded upon the same basis. And the one who will be forced to make a concession will be able to style his defeat as an action done in conformity with the same principle.

[1] Livre jaune. Documents diplomatiques, 1867, VIII, p. 101.

Although it is not a rule of law, one can not deny that it has considerable importance for international law. The principle of equilibrium could form the sanction of international law. It could constitute the force by virtue of which the right of each party might be realized. Just as in internal law the liberties of individuals are protected by the fear of punishment entertained by him who might wish to violate them, the same motive could restrain one state from attacking another. A firm belief that the equilibrium will be endangered would suffice to marshal against the aggressor the united forces of the others, and the conviction that such an event would produce, would hold in check the evil passions and would prevent war.

Why has the principle of equilibrium not succeeded in fulfilling these functions? We have suggested that it lacks clearness, that it can be given various interpretations and that it can serve opposed interests. But, on the other hand, it can not be denied that there are cases in which the states have almost instinctively united against another state which seemed to them to threaten the balance of power. It is sufficient, in this connection, to note the coalitions against Louis XIV, Napoleon I, and recently against Germany. It must also be stated that although the interpretation of the principle may very often present difficulties and serve egotistical interests, the facts may be so evident that the judgment will not be contestable.

But who will be competent to judge whether the balance of power is threatened or not? Over and above the difficulty which the interpretation of the principle itself offers, there is here a question of the highest importance to be solved. Without an organ to apply the force which the opinion of the Powers represents, each one of them will be able to invoke arbitrarily the authority of the principle, which under such conditions can not be conducive to the general interest. But given the existence of a competent organ and the conviction on the part of the organ that the balance of power is being threatened by some state, will it be possible to make this state responsible? Will it be possible to check the growth due to the fortunate development of the economic and moral forces of a country? The industrial life of a state will, for instance, require colonies. What means shall be employed to satisfy the necessary needs of a country? It is evident that the change of physical and moral conditions will never permit a balance *status quo*. This is still another reason why the principle of equilibrium could not succeed in guaranteeing international law.

We have shown that every invocation of the principle of equilibrium necessarily presupposes the existence of a general interest. This interest has not been everywhere understood or perhaps it has not always existed—this interest of peace. It was natural that the ambitions of the states sought their satisfaction in war at a time when the victor derived material benefits from his victory. Now, when the economic effects of war are heavily felt by all the states, their common interest is clearly outlined.

And the community of interest from this point of view will be accentuated to such an extent that all means will be employed to hinder a state from aggrandizement in a manner which constitutes a menace to the others. The same holds true in a case where the aggrandizement is due to a development of the interior forces of the state. In adopting this point of view, it does not follow necessarily that the solidarity of the states would demand the mutilation of another state whose growing greatness depends upon its moral or material activity. Diplomacy can furnish other means designed to give free play to the interior forces of the state; by treaties of commerce the need of raw materials can be satisfied, and by virtue of the system of spheres of interest, the population can find new fields for its activity. But in order to realize this idea of solidarity which should unite the states against evil passions conducive to war, the moral element must manifestly be emphasized. It will be necessary for the state to have the desire to reconcile its own interests with the respect for the rights of the others. The thought of Talleyrand has not lost its applicability.

It must be stated that if the principle of equilibrium has not succeeded in guaranteeing the rights of all, the reason for this is the fact that there is no instrumentality capable of giving a just interpretation to the requirements of the principle, that the common interest of the states in maintaining it is not clearly defined, and that the considerations of a moral order have not been introduced into it. It is clear that in the efforts to constitute the League of Nations we must see the expression of a desire to create a new condition of affairs in this connection. The conception of moral obligations among states, their common interest accentuated by a formal organization, and the institution of an executive agency indicate a development in this direction. But what should be specially noted is the fact that these efforts are made, not because they are considered as sufficient or useful in themselves, but in order to bear out the principle of equilibrium. For the system which incorporates the collective threat or the use of military or economic force against a state that seeks to disturb the peace can only rest upon the principle of equilibrium, better understood and better realized.

COLONIAL REPRESENTATION IN THE AMERICAN EMPIRE*

(WITH SPECIAL REFERENCE TO PORTO RICO)

By Pedro Capó Rodríguez

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Ordinarily we speak of an empire as a state governed by an emperor, as for instance, the two Napoleonic Empires in France. But in a broader and more modern sense, an empire is a powerful state which has wide and supreme dominion over extensive and outlying territories and countries inhabited by peoples usually of a different race, historical background and civilization. In this manner, we speak of an imperialistic nation when the policy of that nation, whatever its form of government, aims to create for itself a position of dominance and control over backward, weaker or helpless nations, territories or peoples.

The expression American Empire may be perhaps a trifle shocking. It was, however, used long ago by Chief Justice Marshall, and repeated by other eminent jurists, statesmen and writers both of this country and abroad. While no one will claim, I think, that the United States has ever deliberately or consciously pursued an imperialistic policy, yet there is indeed sufficient evidence in the history of this country to convince any one that we have very noticeable imperialistic tendencies among certain classes of our citizens. As a matter of fact, there is now at the present time, and there has always been in this country in the past, a powerful group of men who have at different times fostered and encouraged the notion of establishing an American Empire. Franklin, we are told by a careful American writer, had already planned in 1775 an American Empire. He says:

When it is recalled that it was Franklin who made the first draft of Articles of Confederation which was considered by Congress, it is not surprising to find that it contained provisions establishing an American Empire in which the American Confederation was to be the Imperial State. It was Franklin who made the original draft of the Plan of Union which, as has been already noticed, provided for the establishment of an American Empire much more completely and distinctly than it did for the

* This article is based, mainly, on a lecture delivered by the writer before the School of Diplomacy, Jurisprudence and Citizenship of the American University, Washington, D. C., May 23, 1921.

establishment of an American State. He was the foremost expansionist of his times. . . .[1]

That the doctrine of national expansion, which is perhaps a less aggressive and a more pleasing term than imperialism, has had very numerous and powerful partisans among the people of this country is shown by the fact that since the creation of the Union of the thirteen original colonies, the United States has developed steadily in amazing proportions to its original size, adding more and more territory, until today the American people can truly boast, as did Charles I of Spain, the richest monarch in the Christian world, nearly four centuries ago: "The sun in my dominions never sets."

Originally the United States was merely a confederation of States. The Union of these States began among the colonies and grew out of a common origin of mutual sympathies, kindred principles, similar interests and geographical relations. This union was confirmed and strengthened by the necessities of war and received definite form and character and sanction from the Articles of Confederation.[2] As originally established, the United States had no territory whatsoever. As is well known, the territory belonged to or was claimed by the individual States. Soon, however, after the confirmation by the treaty of 1783 with Great Britain of the claims of the original thirteen states to the territory stretching to the west as far as the Mississippi River,[3] the so-called "Territory Northwest of the River Ohio" came under the control of the Continental Congress through the cessions made by New York in 1781, Virginia in 1784, Massachusetts in 1785 and Connecticut in 1786.[4] Thus, when the present Constitution was adopted for the purpose of establishing "a more perfect Union," we find the United States already the possessor of that wonderful tract of territory so famous in the history of this country, consisting of the area west of Pennsylvania, north of the Ohio River and east of the Mississippi, which now constitutes the richest center of population and wealth in the United States. The "Territory Southwest of the River Ohio" was then acquired by the United States by virtue of the cessions made by South Carolina in 1787, North Carolina in 1790, and Georgia in 1802.[5]

[1] A. H. Snow, The Administration of Dependencies, Chap. XIX, entitled "The American Empire Planned, 1776."

[2] Texas *v.* White, 7 Wall. 700.

[3] "The conclusion of the peace treaty with Great Britain in 1783 gave to the Americans an area bounded on the west by the Mississippi, on the south by Florida, and on the north by the Great Lakes and the ridge between the St. Lawrence and the Atlantic. Their neighbors were the Spanish on the south and the west and the English on the north." O. P. Austin, Steps in the Expansion of Our Territory, pp. 79-80.

[4] Gannett, Boundaries of the United States, House Doc. No. 679, 58th Cong., 2nd Sess., pp. 30-35.

[5] *Ibid.*

After that the territorial expanison of this country was enormous. In rapid succession the United States acquired the Province of Louisiana in 1803, the Floridas in 1819, Texas in 1845, Oregon in 1846, California and the other western territory acquired from Mexico in 1848 and 1853. In addition to these acquisitions of contiguous territory, the United States has acquired complete sovereignty over Alaska, Hawaii, the Philippine Islands, Porto Rico, the Virgin Islands and some other minor islands in the Pacific and elsewhere.[6] The United States has also acquired the Panama Canal Zone, and exercises virtual protectorates over Cuba, Panama, San Domingo, Haiti and Nicaragua. We see, therefore, that while the United States was at first merely a Confederation of States, with no territory outside that belonging to the individual States, it is now a very powerful nation, developing rapidly into a magnificent empire; an empire which embraces within its jurisdiction, first, the States which compose the Union as the metropolitan nucleus, and second, the overseas possessions and dependencies and non-contiguous territories and protectorates as the subservient parts of that empire.[7]

When the present Constitution was adopted, its framers were intent on the creation of a union of States. Provision, therefore, was made in that instrument for representation in Congress by the States only.[8] The territory which was already in the possession of the United States was mentioned only in the clause giving Congress the power to make rules and regulations for the management and disposition of the territory and other property belonging to the United States.[9] In regard to colonial representation the Constitution is silent.

Previous to the war with Spain in 1898, it cannot be said that the United States had ever embarked upon the business of a colonizing empire. The memory of colonial days was still too fresh in the minds of the people to permit of any such delusions as an American Empire; and yet we find already before and during the War of Independence the notion that the United States ought to include at least all the English and French-speaking communities of North America, and for years afterwards the view was often expressed that no durable peace with England could exist so long as she retained possessions in the North American Continent. "And when by degrees," says Lord Bryce in his masterly work entitled *The American Commonwealth*, "that belief died away, the eyes of ambitious statesmen turned to the south." The slave-holding party tried to acquire Cuba and Porto Rico in the expectation of turning them into slave-holding States; and after the abolition of slavery, attempts were made by Seward in 1867 to acquire St. Thomas and St. John from Denmark. President Grant also

[6] Gannett, *op. cit.*

[7] "The Union is the Imperial State as respects the dependencies." Snow, *op. cit.*

[8] U. S. Const., Art. I, secs. 1, 2 and 3.

[9] *Ibid.*, Art. IV, sec. 3, par. 2.

tried in 1869-73 to acquire San Domingo, which was an independent republic, but the Senate frustrated both these designs. Apart from these incidents, and the purchase of Alaska, the United States showed no desire to extend its territories from the Mexican War until the war with Spain in 1898.[10] The annexation of the Hawaiian Islands took place in the same year.[11]

It is of the first importance to be observed here that the wonderful growth of the United States until that time had been upon the basis of territorial acquisition with a view to ultimate statehood. This had been so since the acceptance by the Continental Congress of the cession made by Virginia in 1784 of all her right, title and claim to the Northwestern Territory, "upon condition that the territory so ceded shall be laid out and formed into states . . . and that the states so formed shall be distinct republican states, and admitted members of the Federal Union, having the same rights . . . as the other States." And in order that the United States might carry out and fulfill these undertakings, power was given to Congress in the present Constitution to admit new States to the Union.[12] In the meantime the newly acquired territories were held under direct control of and right of disposition by Congress until they had become sufficiently populated and prepared to be admitted into the Union upon an equal footing with the other States. This practice had been strictly followed ever since the first acquisition of territory by the United States until the cessions made to this country by Spain as a result of the Spanish-American War in 1898. That war, as aptly remarked by Judge Elliott in his remarkable work on the Philippines, may be graphically described as the "coming out party" of the United States as a colonizing nation. It really marked a new epoch in the development of the American Empire, and indeed a new stage in the development of colonial government.

As is well known, the new acquisitions presented a new series of problems which called for very extraordinary solutions. Under the famous Northwest Ordinance of 1787, enacted in accordance with the conditions of the cession made by Virginia three years before, the principle was proclaimed by which American expansion was to be regulated.[13] By that ordinance the wide expanse of territory ceded by Virginia to the Continental Congress was declared a national domain, a reserve tract out of which, as

[10] W. F. Willoughby, Territories and dependencies of the United States: Austin, *op. cit.*

[11] *Ibid.*

[12] Art. IV, sec. 3; see Watson on the Constitution, Vol. 2, p. 1245 *et seq.*

[13] The authorship of this ordinance rightly belongs to Mr. Jefferson, and next to the Declaration of Independence (if indeed standing second to that), this document ranks first in historical importance of all those drawn by him. According to Mr. Willoughby, "Next to the Constitution itself, it is the most important organic act of the Federal Government." Willoughby, *op. cit.*, p. 27 *et seq.*; see also Watson, *op. cit.*, p. 1245 *et seq.*

the population increased, new States should be created, as already suggested, with rights in every way equal to those of the old ones. And even before such States should come into existence, the settlers in this region were to be granted the right of *habeas corpus,* of trial by jury and other essentials of Anglo-Saxon liberties. There was to be a local legislature or General Assembly composed of the governor, a legislative council and a house of representatives with authority to make laws in all cases for the good government of the district not repugnant to the provisions of the Ordinance. And as soon as a legislature should be formed in the territory, the council and house of representatives assembled had authority to elect, by joint ballot, a delegate to Congress, with a seat in Congress and a right of debating, but not of voting during this temporary territorial government.

Archibald Cary Coolidge, an American writer of note, has this to say:

> The principle of the Northwest Ordinance was a new one in the history of democratic national expansion. Up to this time, colonies—unless, like the Greek ones, they separated themselves at the start—had been regarded as mere appendages or outposts of the mother country. They might have privileges and liberties of their own, but these privileges were personal; the territory did not form an equal part of the parent state, except in countries with an autocratic form of government, where all lands were at the disposal of the sovereign. Thus, though the emigrant to Eastern Siberia might feel that his position was exactly the same as that of his brother in Moscow, since both were subjects of a despotic ruler, the Englishman in the colonies was not the equal of the one at home, for he could vote for no member of parliament. No one of the English settlements had enjoyed complete self-government from the beginning; and the American Colonies had not contested the right of the mother country to legislate for them. They had merely resisted, as a violation of their inalienable rights as Englishmen, her attempt to impose taxes upon them without their consent; and this resistance had led to the war for independence. Now that they had triumphed and had possessions of their own about which they must legislate, they wisely determined to treat the new colonies as the equals of the old, and to impose upon them only such temporary restrictions as were necessary during the period of first development, when they were too weak to walk without guidance. Not only is the Northwest Ordinance thus of fundamental importance in the history of the United States, but it is a landmark in the story of government.[14]

This principle of the Northwest Ordinance that the government by Congress of the territory belonging to the United States was to be merely temporary until its admission to the Union as a State or States thereof, upon an equal footing with the other States, was successively extended to all other territories subsequently acquired by the United States. In carrying out this principle Congress had full power and authority to fix the time and conditions for the proper admission of the new States under the

[14] The United States as a World Power, pp. 28, 29.

Constitution. Of course, no condition imposed by Congress upon the territory for its admission into the Union as a State would be binding upon the new State which attempted to place it in a position of inferiority or inequality in respect to the other States. When a territory is admitted into the Union as a State thereof, it at once takes rank with every other State. There are no grades among the States of the Union. Until a State is in the Union it is out of it, but once in, it is on a perfect equality with every other State.[15]

In so far as representation in Congress is concerned, originally and until the Spanish-American War in 1898, the principle was virtually recognized that the territories were at least entitled to be heard in the law-making body of the United States. Thus, it became the constant policy of Congress when legislating for the organization of newly acquired territory by the United States to grant to such territory the right to have a delegate in Congress, with a seat in the House of Representatives, and a right of debating but not of voting therein.[16] And while this sort of representation was not at all adequate or effective, yet so long as the old order of things continued to exist, that is to say, so long as the principle of ultimate admission to the Union was adhered to, this defective and inadequate representation of the territories in Congress was generally viewed as merely temporary and preparatory to the proper representation of the future State in the councils of the nation upon an equal footing with the other States, and therefore, was considered acceptable, and probably no one ever complained.

It is probable that adherence to the principle of the Northwest Ordinance had been until then possible not only because the territories so far acquired by the United States, with the exception of Alaska and Hawaii and some minor islands in the Pacific and elsewhere, had been contiguous territories, but also because they were populated by the same sturdy race of Americans who had peopled the original colonies which formed the Union, or if by other peoples of a different extraction and race, they were so sparsely populated that this alien element of their population could be easily outnumbered in the course of time by the steady increase of American settlers, all of which contributed to give greater solidarity and strength to the Union.

But now, suddenly and without warning, the whole situation was changed by the fortuitous circumstances of the Spanish-American War,

[15] Dick *v.* United States, 208 U. S. 340.

[16] "There is no authority (express?) in the Constitution for granting a representative to a territory, nor is there any authority in that instrument for allowing a territory to be represented by a delegate, but it has been the policy of the government to permit each territory to elect a delegate to the House of Representatives. Such delegate is given the privilege of taking part in the proceedings of the House, but he is not permitted to vote on any measure coming before that body." Watson, *op. cit.*, Vol. I, p. 169.

and this country found itself confronted with the difficult and complicated problems arising from the acquisition of distant and alien territories and peoples of different ethnical compositions, history and civilization, entering, so to speak, upon the adventure of an imperial career.

In the first place there were the Philippines, an enormous archipelago composed of more than three thousand islands, 7000 miles away, with their eight or ten million of heterogeneous peoples in various states of civilization, and the overwhelming difficulty of applying to them principles which until that time had been so easily applied in the former territories acquired by the United States. On the other hand, there was Porto Rico, an island in the Caribbean, about a thousand miles from the mainland of the United States, densely populated by a fairly homogeneous and cultured people who had received the American forces as fellow Americans and liberators; but a people of a different ethnical structure, with a different historical background, with different language, customs, laws, religion, mental processes, ideals, and everything that goes to make up a people.[17]

Out of this situation naturally arose the notion of governing these peoples upon an entirely different principle.[18] There was, on the other hand, a large portion of the American people who were opposed to the retention of these acquisitions and the application to them of the same old principle lest they should disturb the social, political and economic life of this country. The sentiment of this large portion of the American people was so keen on this point, especially as to the Philippines, that the Senate of the United States took upon itself, soon after the act of ratification confirming the treaty of cession, to make by resolution the following declaration by a vote of 26 to 22:

> *Resolved*, etc., That by the ratification of the treaty of peace with Spain it is not intended to incorporate the inhabitants of the Philippine Islands into citizenship of the United States, nor is it intended to permanently annex said islands as an integral part of the territory of the United States, but it is the intention of the United States to establish on said islands a government suitable to the wants and conditions of the inhabitants of said islands to prepare them for local self-government, and in due time to make such disposition of said islands as will best promote the interests of the United States and the inhabitants of the said islands.[19]

This resolution could not of course have any legal effect on the actual political status of the Philippine Islands,[20] but it was indeed an apparent departure from the old principle which had been applied theretofore in

[17] "Instead of an open field offering every facility for the building-up of American communities with American institutions and laws, the United States, in Porto Rico and the Philippines, thus, had to do with countries fully occupied and already completely equipped as regards public institutions." Willoughby, *op. cit.*, p. 79.

[18] See this JOURNAL, Vol. 10, pp. 312-317.

[19] Cong. Rec. 55th Cong., 3rd Sess., Vol. 32, p. 1847.

[20] Fourteen Diamond Rings, 183 U. S. 176.

respect of all previous acquisitions. Or, as said by Mr. William J. Bryan, the leader of the Democratic Party, in a famous speech at that time:

> I want to distinguish between expansion and imperialism. Republicans try to hide behind the word expansion. They say we have expanded in the past. Yes, my friends, this Government has expanded. This nation has secured contiguous territory, territory suitable for the settlement by American people, and that new territory has been settled and built up into States; but when we have expanded heretofore we have extended the limits of a republic. Now we are asked not to expand the limits of a republic, but to aspire to an imperial destiny and convert a republic into an empire.
>
> Be not deceived. There is nothing in the past like that which we now are asked to embark upon. Heretofore we have had no expansion that separated citizens into two classes. Heretofore when people have come in they have come in to share in the destiny of this nation. This is the first time that we have been told that we must cross an ocean, conquer a people, drag them under our flag, and then tell them they are never to be citizens, but are to be subjects, and to be treated with kindness by our people.[21]

As to the future disposition to be made of Porto Rico, nothing was said at the time; but partly because of the natural alarm of the people and partly because of the apparent necessity of empowering the Federal Government to deal with the new acquisitions in the manner and form that should become the situation, the doctrine was for the first time promulgated in the constitutional history of this country that newly acquired territories and peoples were not to be considered as integral parts of the United States, as the former territory had been, but merely possessions or dependencies of the United States, subject to future disposition by Congress.[22] In this way Congress was given unlimited power of government and disposition, not only over the Philippine Islands and Porto Rico, but also over any other territories and peoples that should be acquired by the United States in the future. This was indeed a very radical change, commendable perhaps for the gradual development of the American Empire, but it cannot be denied that the inhabitants of both the Philippines and Porto Rico were deprived of the benefits of the Constitution and time-honored traditions of the Republic—rights which had been always recognized and acknowledged to be inherent rights of the inhabitants of the former territories of the United States; and while efforts were made at the same time by proper limitations upon this novel doctrine, to protect these people against unreasonable encroachments by Congress upon their elemental rights of life, liberty, property, public worship, etc., such fundamental rights of American liberty as the writ of *habeas corpus* and public trial by jury were absolutely denied to them.

[21] Cong. Rec., 56th Cong., 1st Sess., Vol. 33, p. 6340.

[22] For the legal aspects of the doctrine see Downes *v.* Bidwell, 182 U. S. 244; see also an article by the writer on "The Relations between the United States and Porto Rico" in this JOURNAL, Vol. XII, pp. 483 *et seq.*

One of the most important features of these unusual conceptions in the American theory of government was that these newly acquired territories were not to be regarded in any legal or political sense as future States of the Union, and therefore they were not given any positive right of representation, not even the very limited, inadequate and ineffective representation which had been accorded to all other territories in the past. Thus, while under the old order of things the territories were entitled to have a delegate in the House of Representatives with a seat therein and the right of debating, that is to say, with the right to speak and thus present his own views upon any subject brought up for the consideration of that body, but with no right to vote which might directly and effectively influence Congressional legislation, the newly acquired territories were not considered entitled to even that meager representation. Under the impression, however, that the people of these newly acquired territories should have some sort of official recognition in Washington, the capital of the nation, near the Federal Government, they were permitted to have so-called Resident Commissioners to the United States. In order to understand what is a resident commissioner from these newly acquired territories to the United States, we must go directly to our best source of information, namely, the organic acts of these territories, enacted by Congress for their government; and since the character and rights, or privileges, of all these Resident Commissioners are substantially identical, we shall take as an illustration the case of Porto Rico. The first organic act of Porto Rico, the so-called Foraker Act, enacted in 1900, provided (Section 39) as follows:

> That the qualified voters of Porto Rico shall choose a resident commissioner to the United States, who shall be entitled to official recognition as such by all Departments, upon presentation to the Department of State of a certificate of election of the governor of Porto Rico, . . . Provided, That no person shall be eligible to such election who is not a bona fide citizen of Porto Rico, . . . and who does not read and write the English language.[23]

The same provisions have been practically reënacted in the present organic act of that island, the so-called Jones-Shafroth Act, passed by Congress at the urgent demand of President Wilson in 1917.[24]

From a careful examination of these provisions, it is apparent that the Resident Commissioner from Porto Rico is not a delegate in the same sense as the delegates from Hawaii and Alaska are, for he is neither entitled to have a seat in the House of Representatives, nor the right to debate, and much less to vote. However liberally construed, these provisions do not

[23] 31 U. S. Stat. at Large, p. 77; see also Some Historical and Political Aspects of the Government of Porto Rico, by the present writer, in *The Hispanic American Historical Review*, Vol. II, pp. 566 to 567 and 581-582.

[24] Public. No. 368, 64th Cong. [H. R. 9533]. Also in Kettleborough's The State Constitutions.

entitle him to even so much as to be admitted to the floor of the House. If he is allowed a seat therein, if he ever is permitted to take the floor in the House of Representatives, it is by the mere courtesy of that branch of Congress, and must be therefore by unanimous consent of the members present at the time, for if a single representative should object to his taking the floor, there would not be any parliamentary escape to a positive negative. Sometimes he is given two minutes, sometimes three, sometimes five, but rarely is he allowed more than ten minutes to talk. Usually if the time allowed him by the House expires before he has finished his speech, he is allowed one or two minutes more, and if still he has something else to say, he is permitted to extend his remarks in the record as a further compliment, if they are not too long.

Under these conditions it is apparent that the Commissioner from Porto Rico will have, out of necessity, to circumscribe his remarks to matters directly concerning that island, for it is highly problematic whether the House would, except under very exceptional circumstances of personal charm and eloquence on the part of the Porto Rican Commissioner, extend to him the courtesy of debate in matters not relating to the island. It has not happened as yet, and it is not, in my opinion, very likely that it will ever happen, at least while things continue as they are.

It is for these reasons, perhaps, that the Commissioner of Porto Rico will, as a rule, absent himself from the House, unless, out of mere curiosity he attends the meetings as a spectator, just to see what is going on therein, or unless some legislation is pending before the House which directly or indirectly affects Porto Rico, or unless, perhaps, he wishes to call the attention of the House of Representatives to some matter or event affecting the interests of the island, or to some petty question of personal privilege.

He is not in any legal or parliamentary sense of the word a member of Congress, although, indeed, he is entitled to use the same stationery as the members of Congress and is given office quarters in the House Office Building, and has the same salary, and all the other perquisites and emoluments pertaining to representatives in Congress.

And this condition attending the so-called representation of Porto Rico in Congress is in substance equally applicable to the representation of the Philippines. So far, however, as the Philippine Islands are concerned, a very marked distinction may be perhaps established which may, no doubt, change our point of view. Owing, of course, to the fact that Porto Rico and the Philippines were acquired by the same act of cession from Spain, it is legally assumed that their status is identical as possessions or dependencies of the United States.[25] The apparent and logical conclusion from this would seem to be that both should occupy identical positions in this matter of colonial representation in the American Empire. As a matter

[25] Fourteen Diamond Rings, *supra*, *note* 20.

of fact, however, a very plausible reason might be presented to justify this sort of representation by so-called Resident Commissioners in the case of the Philippines, while in the case of Porto Rico it could have and has no justification at all.

It is not necessary to emphasize the wide differences existing between Porto Ricans and the Filipinos in their respective ethnic compositions, actual state of culture and development, and social, political and economic problems, geographical positions, or the international aspects of their situation, in order to show a justification for considering Porto Rico and the Porto Ricans as two entirely different things from the Philippine Islands and the Filipino people. The matter refers to the policy of the United States respecting the ultimate political status and disposition to be made of Porto Rico and the Philippine Islands.

In a message delivered by President Wilson before both Houses of Congress, in 1913, he made the following declarations:

> No doubt we shall successfully enough bind Porto Rico . . . to ourselves by ties of justice and interest and affection, but the performance of our duty toward the Philippines is a more difficult and debatable matter. We can satisfy the obligations of generous justice towards the people of Porto Rico by giving them the ample and familiar rights and privileges accorded our own citizens in our own territories, . . . but in the Philippines we must go further. We must hold steadily in view their ultimate independence, and we must move towards the time of that independence as steadily as the way can be cleared and the foundation thoughtfully and permanently laid.[26]

The principles embodied in these words of President Wilson were some years later incorporated in the new organic acts for the Philippine Islands and Porto Rico. While in the preamble of the new organic act for the Philippines approved by President Wilson on August 29, 1916, it was stated that "Whereas it is, as it has always been, the purpose of the people of the United States to withdraw their sovereignty over the Philippine Islands and to recognize their independence as soon as a stable government can be established therein,"[27] in section 5 of the organic act for Porto Rico, approved by President Wilson on November 2, 1917, it was provided: "That all citizens of Porto Rico . . . are hereby declared and shall be deemed and held to be, citizens of the United States."[28]

And President Harding in a recent speech made in New York at the unveiling of the statue of Simon Bolivar in Central Park, said:

> We do not forget that in the United States today we have Latin-American devotion to the Stars and Stripes. Porto Rico is a part of us, under a permanent policy aimed at her prosperity and progress, and we see in our

[26] Abridgment, Messages & Documents, 1913, Vol. I, pp. 9-10.
[27] Kettleborough, *op. cit.*, p. 1597.
[28] *Supra*, Note 24.

Latin-American state the splendid agency to help interpret the Americans to one another.[29]

From these solemn declarations of the American people by the mouth of their most authorized representatives, it would seem safe to infer that the policy of the United States towards these territories and peoples is to be shaped quite independently of each other, and that while Porto Rico is to be retained as a permanent part of the United States, the Philippines are not to be incorporated into the Union but rather separated and made independent, either immediately, or gradually, or as soon as the moment is deemed opportune for carrying into execution such a policy by direct legislation.

Now, if the Philippines are never to be incorporated into the United States, but are eventually to be given their independence, it would seem quite logical and proper not to give them any real share in the making of our national laws.

But the case of Porto Rico stands altogether upon a different footing. Although it might be very well said that previous to the breaking out of the great European War in 1914, there were still in this country some distinguished statesmen and diplomats who thought that the wisest and most practical and probable solution of the Porto Rican problem would be to establish Porto Rico as a new republic, after the fashion of Cuba, under a virtual protectorate by the United States, conditions have changed to such an extent during and since that war all over the world, that such a solution would hardly find support today among responsible Americans. The policy of the United States respecting Porto Rico seems to be, as already suggested, to retain permanent sovereignty over that Island, the only difficulty in that direction being the question of fixing and determining the exact political relations that must exist between the two countries in the future. Manifestations of this policy may be found not only in the responsible declarations of prominent Americans, but also in the general course pursued by the Federal Government in Porto Rico and the extension of the privilege of American citizenship to the inhabitants of the island.

If I am not mistaken respecting a fixed policy by the United States of retaining permanent sovereignty over the island, the question of fixing the future relationship which must bind forever Porto Rico to the United States may well be said to hinge upon the question whether the American people will decide now or later to recede from the path of an imperial career and return to the old principle of the Northwest Ordinance. If it is decided to follow again the principle of that Ordinance, the solution will naturally be statehood, that is to say, the ultimate admission of Porto Rico as a State of the Union on a footing of equality with the other States. If,

[29] *Washington Post*, April 20, 1921.

on the other hand, the American people decide to abandon that precious principle which has given cohesion and stability to this great Republic, preferring to deviate from the straight path of equality, and embark upon the world-worn adventure of a great empire, founded upon inequality, then, I am afraid the situation will have to be the perpetuation of a colonial system, which in the course of time must fall and crumble into dust.

In the first alternative the question of representation is immediately determined, because in case of Porto Rico's admission as a State, the Constitution would give to that island a satisfactory representation based upon the same ratio as the representation of all the other States. In the second alternative, that is to say, in the case of retaining Porto Rico in its present condition of a mere colony, possession or dependency of the United States, the question of representation becomes a real problem for this nation to solve, for no greater folly can be entertained by imperialistic nations at this present day of popular education and enlightenment than to expect, unless it is done by sheer force of arms, and until that force can be successfully opposed by a greater one, that peoples who are conscious of their own development and attainments shall submit submissively and indefinitely to the dictation of an imperialistic authority.

If we look at the British Empire today we see a great movement going on in that wonderful conglomerate of peoples of so many races, towards effecting a closer union of the Empire founded undoubtedly upon the recognition of the fundamental principle that no people or group of peoples ought to be bound by imperial laws or policies in whose formulation they have not taken part. A substantial proof of this constructive and refreshing movement is seen in the different suggestions and proposals which have been submitted from time to time by responsible statesmen and experts in political science in different parts of the Empire.[30] But the most substantial manifestation of this movement toward representation by the colonies in the affairs of the Empire may be found in the Imperial Conferences unpretentiously begun thirty-four years ago,[31] and developed to

[30] A. B. Keith, Imperial Unity and the Dominions (1916); Lionel Curtis, The Problems of the Commonwealth (1916); W. Basil Worsforld, The Empire on the Anvil (1916); see also an article on The Privy Council and Problems of Closer Union of the Empire, in the *Journal of the Society of Comparative Legislation*, Vol. 17, pp. 30-44, by Arthur P. Poley.

[31] "The decisions of this Conference may not be for the moment of vital importance; the business may seem prosaic, and may not issue in any great results at the moment. But we are all sensible that this meeting is the beginning of a state of things which is to have great results in the future. It will be the parent of a long progeniture, and distant councils of the Empire may, in some far-off time, look back to the meeting in this room as the root from which all their greatness and all their beneficence sprang." The Marquis of Salisbury, April 4, 1887. Jebb's, The Imperial Conference, Vol. I, p. 5; Keith's, Imperial Unity and the Dominions, *supra*. As to the history and development of imperial coöperation through the Imperial Conference since 1916,

a very large extent during and since the World War for the purpose of consultation previous to the shaping of foreign policies and mapping out the future courses of the Empire.[32]

The great development and success of this movement toward a better understanding and closer union and coöperation between the mother country and the colonies is not, in my estimation, the result only of the material development in wealth, strength and population of the larger dominions of the Empire, but is also a direct consequence of that wonderful awakening of the conscience of the world to higher standards of civilization and respect for the opinions of mankind, which condemns everywhere all attempts made by large and powerful nations to control the destinies of other peoples without giving them a fair opportunity to express their minds and wishes upon the subject. The hour seems to be close at hand when colonies can no longer be held in a state of virtual bondage to the will or caprice of the metropolis, at least in matters which must needs affect their most vital interests and happiness. To the development of the larger dominions and colonies of the Empire which have reached their political majority and naturally seek to establish their right to be heard and heeded in the councils of the empire, there must be added the willingness of the mother country to listen to the grown-up sons who have ceased to be mere children and must now share the responsibilities and cares of conserving their future inheritance.[33]

Even Spain, in spite of the unfortunate and disastrous blunders of her colonial system, had already and for a good many years previous to her total exclusion from the Western Continent, recognized this principle and granted to the Islands of Cuba and Porto Rico a very important representa-

newspaper reports seem to be the only available source; see, however, A. B. Keith's recent publication entitled Dominion Home Rule in Practice, 1921, Ch. VII, p. 53 *et seq.*

[32] "The Conference comprises the Prime Ministers of the United Kingdom and the five Dominions (Canada, Australia, New Zealand, South Africa and Newfoundland), the Prime Minister of the United Kingdom being ex-officio President, and the Secretary of State for the Colonies, who takes the chair in the absence of the President. Other Imperial and Dominion ministers may attend its meetings to deal with their special topics, but not more than two representatives of any party can discuss any issue save with special permission, and each member has only one vote. The omission of India was deliberately decided upon in 1907 on the ground that India does not possess responsible government, but the omission became indefensible in view of the part played by India in the war, and the admission of India to be a regular member of the Conference is now accepted." A. B. Keith's Dominion Home Rule in Practice, page 54.

[33] "In view of the recognition accorded to the Dominions at the Conference of Paris regarding international affairs, it may well be suggested that the process whereby the unity of empire and the individuality of colony are developed and reconciled is reaching its perfect conclusion at this present time; dependence, independence and interdependence, as between mother country and colony and between both and other nations, are being worked out in all their manifold phases in a most startling manner." James Brown Scott, Autonomy and Federation within Empire, p. ix.

tion in the parliament of the kingdom. It is true that in the matter of colonial administration, Spain was far behind the spirit of the times; she always lacked a wise and far-sighted policy which should have insured to her the retention of her American colonies. It is indeed a sad result of her folly in this respect that she should have lost the last foot of territory on the Continent where she was once the mistress of a vast colonial empire. But in so far as this question of representation is concerned, it must be admitted that she was, at least during the last few years of her rule in America, the most liberal of all colonizing nations. The proof is, that even after she granted to those islands the so-called *autonomía*, which was a sort of home rule after more or less the fashion of her own institutions, she continued to accord to the said islands the same right of representation in the Spanish Cortes as before, which in the case of Porto Rico was equivalent to sixteen representatives and three senators in parliament. So that, as said by Señor Sagasta in a memorable document:

> While the representatives of the insular people direct from their local chambers the special interests of their country, others selected by the same people aid and coöperate in the Cortes in the making of those laws in whose mould are formed and unified the different elements of Spanish nationality. And this is not a small or paltry advantage; still less does it furnish ground for surprise, as some might perhaps think, because this presence of the deputies from the Antillas in the Cortes is a close bond of the nationality which is raised above all the unities which live in its bosom, and is now sought as one of the greatest political steps in advance of our day by the autonomous English colonies which are anxious to take part in an imperial parliament in the supreme function of legislators and directors of the great British Empire.[84]

Reflecting somewhat in a spirit of comparison between the old representation of Porto Rico in the Spanish parliament and the present representation of that island in Congress, the result would seem to be rather paradoxical and disappointing, especially when we look upon Spain as an atrabilarious, short-sighted, conservative and selfish nation in contrast with the United States as a highly progressive, far-sighted, liberal and idealistic people.

While it may be said, to the credit of the United States, that in this vast field of empire building, this great nation has taken an advanced step in the matter of colonial administration by adopting as a canon of its imperial policy the self-evident proposition that colonies and subjected peoples are no longer to be selfishly exploited for the benefit of adventurers, captains of industry and carpet-baggers, and that according to American principles the government in such cases must be administered upon high moral standards having as their aim the prosperity and progress of the colony and its inhabitants, yet in the matter of colonial representation the

[84] U. S. Foreign Relations, p. 634.

United States is lagging behind under a policy rather unworthy of its great achievements in the sphere of popular government.

The practical results of the present system of colonial representation of the United States, as exemplified in the case of Porto Rico, are indeed to subject the colonies and their people to a system of congressional dictation and imposition which is not at all promotive of good understanding and harmony, but may be a cause of future disagreement and embarrassment. In order to understand this proposition better, let us examine somewhat in detail some of the practical results of that system taken from the actual experience of Porto Rico.

To begin with, it should be remembered that some 150 years ago it was asserted by the American Colonies under the oppressive rule of George III, that taxation without representation is tyranny. And let us remember also that taxation in that case meant a material contribution of money, a taxation on property, which in the last analysis was only a pecuniary proposition.

Now, during the late World War, a greater, more vital, more exacting and more solemn taxation was imposed under American rule upon the island. It was not an ordinary taxation, not a money taxation, but a blood contribution, a terrible taxation, to be levied upon and collected from the flower of Porto Rico's manhood, for the purpose of raising a large national army, in an equal proportion with every one of the States.[35] And yet, this was done without having accorded to Porto Rico the same legitimate representation which was enjoyed by every one of the States of the Union in the matter of enacting such draft laws as were deemed necessary and proper for that purpose.

The same thing happened indeed in Hawaii, Alaska and the District of Columbia. It may be said, however, that in the case of Hawaii and Alaska, such results are to be ascribed to the transitional character of their status as Territories in preparation for ultimate statehood. As to the District of Columbia, other considerations of equal import may perhaps apply. Hawaii, Alaska and the District of Columbia, furthermore, are not strictly colonies or dependencies; they are considered in law and in fact as territories or integral parts of the United States. Porto Rico is held as standing in a different relation to the United States; it is merely a possession,

[35] The selective draft laws were extended to Porto Rico by acts of Congress, U. S. Stat. at Large, Vol. 40, pp. 76, 557. Dates for registration in Porto Rico were fixed and established by proclamations of President Wilson of June 27, 1917, June 11, 1918, and October 10, 1918. U. S. Stat. at Large, Vol. 40, pp. 1674, 1793, 1860. Actual registration took place on July 5, 1917, July 5, 1918, and October 26, 1918. According to statutory rule, Porto Rico's quota was supplied in the proportion that its population bears to the total population of the United States. The actual number of registrants was 240,886. To this figure should be added the immense number of Porto Ricans of draft age who on account of actual residence in this country were drafted or volunteered in the several States.

a dependency, a people bound to the United States by different juridical and political ties, the ties which are deemed to subsist between the imperial state and a subjected people. Ethnically, historically and geographically, Porto Rico is an entirely different people. They are, however, good American citizens. As a matter of history, they volunteered their services in large numbers and even demanded as a right pertaining to them as such American citizens, to share in the burdens and sacrifices thrust upon the nation by the World War. Nothing, however, could really justify the lack of representation of Porto Rico in a matter so directly affecting the collective and individual life of its people. The attitude of Porto Rico during the whole period of the war is really deserving of credit and praise.[36] But, as a matter of principle, it cannot be denied that compulsory military service should not have been extended to Porto Rico without a previous grant to that island of adequate representation in the enactment of those laws. In fact, the people of Porto Rico ought to have had a legitimate, adequate and effective representation in both Houses of Congress not only in the enactment of said laws, but also in the declarations of war. That is to say, no such exacting taxation, no such blood contribution, no such heavy charges and sacrifices brought on by the war should have been imposed upon Porto Rico without first having given to that island a legitimate, adequate and effective representation in Congress. The same is undoubtedly true with respect not only to those laws which directly or indirectly concern the interests of Porto Rico, but also to all other national measures which must necessarily affect the social, political or economic life of the island. And that representation must be capable of effectively influencing legislation by means of the exercise of the voting power, without which all representation, in the case of Porto Rico as in the case of any other colony or dependency, must be considered as illusory and wholly inadequate.

It does not seem reasonable that when considering and adopting a measure such, for example, as the free sugar proposition under the so-called Underwood Tariff Act,[37] which nearly ruined the island, and was fortunately repealed before it could go into operation,[38] Porto Rico should have had no adequate representation in both Houses of Congress to assert and defend the Porto Rican position upon a matter which, although not exclusively Porto Rican, so largely was to affect the whole economic life of that island.[39]

[36] See Reports of the Governor of Porto Rico to Secretary of War, 1917, 1918, 1919. See also an article published in the New York *Herald*, Aug. 11, 1918, by Henry Wise Wood on "Porto Rico's demand to fight for the Flag."

[37] U. S. Stat. at Large, Vol. 38, p. 131. This law was approved by President Wilson on Oct. 3, 1913.

[38] U. S. Stat. at Large, Vol. 39, pp. 56, 57, approved by President Wilson April 27, 1916.

[39] Under the Underwood Tariff Act sugar was to be admitted into the United States free of duty after May 1, 1916. By abolishing the duty on sugar, the main source

The problem of colonial representation, at least in so far as it refers to Porto Rico, can not be easily eliminated, and much less satisfactorily solved by investing that island with the status of a so-called "Incorporated Territory" of the United States, with all the juridical, political and economic results implied in such a status, because the people of Porto Rico have already outgrown the expediency of that solution.[40] If account is taken of the present state of development and progress of Porto Rico, as well as of the rising sentiment there for a larger participation in its government by its people, the conclusion is inevitable that Porto Rico is where, sooner or later, the United States will be confronted with the unavoidable necessity of solving the problem of colonial representation. It is true that this problem may indeed involve very serious elements of complexity and doubt, but at all events its solution must be undertaken wholeheartedly, as it will probably determine the ultimate policy of the United States in the Caribbean. And it is for this reason that this problem of colonial representation must be studied in special relation to Porto Rico.

While no one can at the present time say with any degree of certainty what will be the ultimate disposition to be made of that island, the odds now seem to be ten to one that it will be retained by the United States, as said by President Harding, under a permanent policy of prosperity and progress for the island. In this connection, it may be said that Porto Rico looms up as a big national problem of the first magnitude, the principal elements of which are indeed its geographical position, the character and present development of its inhabitants, and the national and international implications of the situation.[41] Commonly the suggestion is made that there are two straight solutions to this problem: one is independence; the other is statehood, on an equal footing with the other States. As to the former, public sentiment and the policy of the Government in this country would seem to manifest an ever-increasing opposition to the establishment of any new little republic in the Caribbean. As to the solution of statehood on an equal footing with the other States, it may be said that public opinion has not as yet crystallized in this country in favor of that solution, for there is indeed some apparently insurmountable prejudice among the people as to the expediency and advisability of admitting into the Union a people fundamentally different from the people of the United States. The schemes

of wealth of Porto Rico, namely, the sugar industry, would have been entirely crippled if not completely destroyed. It is entirely certain too that by this measure Porto Rico would have been deprived of the most practical advantage which it now enjoys under the policy of free trade between the United States and that island, as Porto Rico would have been placed so far as this commodity is concerned, in the same condition as a foreign country.

[40] See Report of the Governor of Porto Rico for 1918; also Porto Rico as a National Problem, "Mexico and the Caribbean," pp. 333-363.

[41] See an address by the present writer on "Porto Rico as a National Problem," *supra*.

of some over-zealous and well-meaning Americans of establishing another new doctrine in the American system of government by which new States may be admitted into the Union on a footing of inequality with and inferiority to the other States, are objectionable and dangerous to American institutions and probably will never be countenanced by the American people.[42] On the other hand, no self-respecting people will ever submit to a permanent and indissoluble Union which would degrade them from equal rank with the other States. If any such schemes should ever be carried into practice, this Union would soon deteriorate, for it is the policy of equality which holds the people of the United States together; it is that policy which makes peoples friends and contented. The policy of inequality breeds discontent and enemies and should be entirely rejected.

Personally, the present writer is not a believer in the final solution of Porto Rico's status at this time. In his opinion, neither independence nor statehood are the proper solutions of the problem now. In the many uncertainties of the present and the vast possibilities of the future, no one can say at this time, not even the most far-seeing statesman, what will be the ultimate solution which it will become advisable to give to this problem. We are witnessing a wonderful change in the sphere of international law and order; we are going through a veritable revolution in the field of political ideas; the march of civilization and the unforeseen events of tomorrow may bring about changes which may make logical consequences of future conditions of fact, things which today would appear to be chimerical and absurd. On the other hand, there are substantial reasons why no attempt should be made to determine the ultimate status of Porto Rico now. As to the solution of statehood, it may be said that although in the last twenty years, under the Stars and Stripes, Porto Rico has made wonderful progress along the lines of practical Americanization in consonance with the possibilities of the situation, this is not a lapse of time long enough to test whether the various interests of Porto Rico and the United States can be harmonized for the benefit of both; twenty years is not enough to show whether the Porto Rican people can be thoroughly amalgamated with the people of the United States in order to produce a perfect and indissoluble Union, as that implied in that status. Statehood is in its legal and political implication a permanent status of a very rigid character from which no withdrawal is possible, and if in the course of years it should be shown that no such amalgamation and perfect Union is possible or beneficial, or that it was prejudicial and injurious to either

[42] An example of these schemes may be found in a joint resolution introduced in the House of Representatives in April last, proposing an amendment to the Constitution of the United States to empower Congress to fix and determine the representation in Congress of overseas and non-contiguous territories now or hereafter acquired as territories, possessions or dependencies of the United States, *upon their admission and thereafter as a State of the United States.* H. J. Res. 68, 66th Congress, 1st sess.

Porto Rico or the United States, or both, there would be created an anomalous situation with no possible remedy in sight.

It is worthy of notice in this connection that the most important objection made by those who oppose Porto Rico's admission into the Union on an equal footing with the other States is precisely the constitutional representation which in such case would appertain to that island. As is quite well known, Porto Rico has a total population of nearly 1,300,000. This would give it six representatives in the House at the present ratio of representation fixed by Congress upon the census of 1910,[43] besides the two senators which it would be entitled to have as a State under the Constitution. It is assumed by the opponents of Porto Rico's admission to statehood that such a representation from Porto Rico in the enactment of national laws might give to the island the balance of power in Congress, and that, on suitable occasions, Porto Rico would be enabled to dictate its point of view to the nation. Now, this assumption is just as harmful and unfair as it is absurd and ridiculous. Maryland, Nebraska and West Virginia have six representatives and two senators each, just the same as Porto Rico would have if admitted as a State of the Union; yet, who ever heard of any of these States, or any other for that matter, dictating its own points of view to the nation in Congress? New York has a representation in Congress of 43 representatives, Pennsylvania 36, and Illinois 27; yet who ever heard that the representation of any of these larger States ever became a dangerous bloc in Congress? The same contention was at one time advanced against the admission of the western States to the Union; the same contention was also expressed as to the possibility of the people of the former territories coming into Congress as a bloc and endeavoring to play the rôle of virtual arbitrators of the destinies of the United States. Has not, however, our national experience demonstrated the unreasonableness, the absurdity of these contentions?

There is a point on this question which seems to be ignored by those who advance these unfortunate and ill-advised contentions. The senators and representatives of the several States of this Union are not bound by any particular instructions from their constituency except as manifested by the majorities of the people at the polls; they are not bound by any secret alliance to any local design against the nation. They retain their power of individual analysis and consideration of every measure introduced in Congress and exercise their personal judgment and discretion in the matter of supporting or rejecting it as each of them shall deem it con-

[43] The present ratio of apportionment under the census of 1910 is one representative for every 211,877 inhabitants. There are at the present time two bills pending in Congress to readjust the apportionment of representatives under the Constitution (H. R. 6991, and H. R. 7080). There are also pending various joint resolutions in both Houses of Congress proposing amendments to the Constitution in respect to representation. H. J. Res. 36, 37 and 80; S. J. Res. 44 and 47.

sistent with his own personal convictions and the dictates of his loyalty and devotion to the Union. Why should we assume that Porto Rico's representation would follow any other course than that which is marked out by patriotism and common sense? Why should we assume that Porto Rico's representation would not live up to the same standards as the representatives of the other States? Why should we assume that they would not uphold the sacred traditions and the glorious institutions, and support to the best of their knowledge, ability and strength the highest interests of the nation? Reason, good faith and trust are better counsellors than prejudice, unfairness and suspicion.

As to the solution of independence, the present writer's opinion is that it is not to be desired, at least at the present time, nor even in the immediate future, unless the people are well prepared for the purpose, and there is a well-defined and earnest purpose on the part of the United States to respect the sovereignty, territorial integrity and political independence of the government to be established in the island. If no such preparation really exists and if no such purpose is entertained, it will be indeed a great deal better to leave Porto Rico's status as it is today. Furthermore, the instability of the world's affairs, on the one hand, and the unsettled conditions in the Caribbean, on the other, make it uncertain whether the creation of a Porto Rican Republic would be at all advantageous to either Porto Rico or the United States. More small republics are not indeed to be desired on this continent, as their helplessness renders their existence precarious and a source of possible disturbances and war.

On the other hand, the Caribbean policy of the United States is still in a state of formation. No one can say at the present time what that policy will be in the immediate or the distant future. So far as it can be conjectured from the present state of things, the policy of the United States in the Caribbean is now confined to the solution of questions demanding immediate attention without entering into an exact determination of the ultimate purpose of the United States in respect to the future destinies of the countries bordering on that turbulent region of our Continent; and while there are those who would gladly see the United States advance its boundaries to the Panama Canal, there are others who do not believe in any such policy of territorial aggrandizement at the expense of weak and helpless peoples; those who are willing to compromise on this point would prefer, perhaps, to have the United States strengthen rather than weaken its position in the Caribbean, but not to the extent of incorporating such vast extensions of territory inhabited by millions of alien and unassimilable peoples, whose disposition would surely become a source of great perplexity to the United States. Perhaps the latter view will eventually prevail; but at any rate, the policy of the United States in the Caribbean is not at all definite and clear, and no solution of Porto Rico's status should be under-

taken now which might be a hindrance to a healthy development of that policy in the future.

In this connection it may be said that in the matter of adjusting the exact political relations which should exist between the United States and Porto Rico, care should be exercised not to be impressed too deeply by the contentions of the extremists; there is indeed an undeniable flexibility and ease in the present status of the island which permits the United States to deal with it in the manner best calculated to promote its own interests and the welfare and happiness of the Porto Rican people, until a later time when the changes, the fruits of the present upheavals, are all accomplished and the world has again settled down to its ordinary routine of life; when we of the present generation or our posterity shall know what is best.

In the meantime, however, the situation does give rise to very important problems of government. Porto Ricans in the first place should be made to feel that they are not American citizens merely by name; they should be made to feel that they have been really taken into the great American family; and in view of the wonderful record made by the island in the last twenty years, under the Stars and Stripes, nothing less than complete self-government in local matters and an adequate representation in Congress should be accorded to them as a token of confidence in their ability and appreciation by the American people of their loyalty and devotion to the United States. In determining our policy in Porto Rico we should, moreover, look upon that island as something very valuable over and above the material considerations of military and commercial advantages which are derived by this country from its physical possession and control.

If we are to use our opportunities in Porto Rico, we should deal with it as an experimental field for the development of a far-sighted colonial policy aimed at a closer Union of the different parts of the American Empire, appealing to the natural aspirations of the people by making membership therein desirable, and serving at the same time as a means to test the capacity and disposition of the people for their ultimate admission into the Union as a State thereof, on an equal footing with the other States. And in the furtherance of that policy, American colonies and dependencies should be given an adequate representation with voice and vote in both Houses of Congress with such limitations or restrictions as should be deemed advisable or expedient.

The potential scope of the doctrine of incorporation laid down by the Supreme Court in the Insular cases could easily be extended so as to facilitate the working out of a constructive formula along this line of progress.[44]

[44] See note 22, *supra*.

EDITORIAL COMMENT

THE PEACE TREATIES

The contractual stipulations of the three peace treaties between the United States and Germany, Austria and Hungary, respectively, are comprised in two articles in each treaty which are so nearly the same in all that the following comments on these provisions in the German treaty will apply equally to the others.

By Article I of the treaty with Germany that Government undertakes to accord to the United States and agrees that the United States shall have and enjoy all the rights, privileges, indemnities, reparations or advantages specified in the Congressional Peace Resolution, by which resolution the United States reserved to itself and its nationals "any and all rights, privileges, indemnities, reparations or advantages, together with the right to enforce the same, to which it or they have become entitled under the terms of the armistice signed November 11, 1918, or any extensions or modifications thereof; or which were acquired by or are in the possession of the United States of America by reason of its participation in the war or to which its nationals have become rightfully entitled; or which under the Treaty of Versailles have been stipulated for its or their benefit; or to which it is entitled as one of the Principal Allied and Associated Powers; or to which it is entitled by virtue of any Act or Acts of Congress; or otherwise."

Article I further provides that the United States shall fully enjoy all the rights and advantages stipulated for its benefit in the Treaty of Versailles notwithstanding the fact that such treaty has not been ratified by the United States.

No qualification or limitation is imposed by this treaty upon the enjoyment by the United States of any of the broad rights and powers reserved to it by the Peace Resolution, but with a view to defining more particularly the obligations of Germany under Article I with respect to certain provisions of the Treaty of Versailles, Article II of this treaty specifies:

(1) That the rights and advantages stipulated in that Treaty for the benefit of the United States, which it is intended the United States shall have and enjoy, are those defined in Section 1, of Part IV, and Parts V, VI, VIII, IX, X, XI, XII, XIV, and XV.

The United States in availing itself of the rights and advantages stipulated in the provisions of that Treaty mentioned in this paragraph will do so in a manner consistent with the rights accorded to Germany under such provisions.

(2) That the United States shall not be bound by the provisions of Part I of that Treaty nor by any provisions of that Treaty including those mentioned in Paragraph (1) of this Article, which relate to the Covenant of the League of Nations, nor shall

the United States be bound by any action taken by the League of Nations, or by the Council or by the Assembly thereof, unless the United States shall expressly give its assent to such action.

(3) That the United States assumes no obligations under or with respect to the provisions of Part II, Part III, Sections 2 to 8 inclusive of Part IV, and Part XIII of that Treaty.

(4) That, while the United States is privileged to participate in the Reparation Commission, according to the terms of Part VIII of that Treaty, and in any other Commission established under the Treaty or under any agreement supplemental thereto, the United States is not bound to participate in any such commission unless it shall elect to do so.

(5) That the periods of time to which reference is made in Article 440 of the Treaty of Versailles shall run, with respect to any act or election on the part of the United States, from the date of the coming into force of the present Treaty.

The provisions of the Treaty of Versailles, which are mentioned in subdivision (1) of Article II, above quoted, as those defining the rights and advantages stipulated in that treaty for the benefit of the United States which it is intended the United States shall have and enjoy, relate to the following subjects:

Section 1 of Part IV.—German colonies, embodying Germany's renunciation of her former overseas possessions in favor of the five principal Allied and Associated Powers.

Part V.—Military, Naval and Air Clauses, containing provisions for the establishment of inter-allied commissions of control over Germany's military, naval and aeronautical establishments as limited by the treaty.

Part VI.—Prisoners of War and Graves Clauses, relating to the repatriation of prisoners of war and interned civilians and the care of the graves of soldiers and sailors buried in enemy territory.

Part VIII.—Reparation Clauses, providing for the constitution and powers of the Reparation Commission in which the United States is entitled to permanent membership.

Part IX.—Financial Clauses, dealing with the application of Germany's assets to the payment of her liabilities under the treaty.

Part X.—Economic Clauses, dealing with commercial relations, previous treaties, debts, property rights and interests, contracts, prescriptions and judgments, mixed arbitral tribunal, industrial property, and social and state insurance in ceded territory.

Part XI.—Aerial Navigation Clauses, imposing obligations upon Germany with reference to the rights of aircraft of the Allied and Associated Powers in and over German territory until January 1, 1923.

Part XII.—Ports, Waterways and Railways Clauses, relating to international transit through German territory.

Part XIV.—Guarantees Clauses, providing guarantees for the execution of the treaty.

Part XV.—Miscellaneous Provisions, including a provision barring and extinguishing completely all pecuniary claims on the part of Germany or

her nationals, based on events which occurred prior to the ratification of the treaty, against any Allied or Associated Power.

The effect of this treaty, therefore, is to reserve to the United States all of the rights and advantages defined in these clauses which are of benefit to the United States, thus putting the United States on an equal footing with the other Allied and Associated Powers with respect to the exercise thereof so far as Germany is concerned.

In view of the circumstances out of which this treaty arose and the conditions which it was designed to meet, it may fairly be assumed that, like the Congressional Peace Resolution, it is based on the legal position that the victorious Powers in the war acquired certain rights against Germany which were recognized by the Treaty of Versailles and enured to the benefit of each of the belligerents by virtue of their participation in the war, irrespective of whether or not they participated in the Treaty of Versailles.

The United States has definitely adopted that position and, as stated in an editorial in this JOURNAL[1] on the Congressional Peace Resolution, which applies equally to this treaty, a reservation of these rights is notice to all concerned that the failure of the United States to ratify the Treaty of Versailles, and the making of peace with Germany independently of that treaty "was not intended to waive or relinquish these rights, so that the Allied Powers would not feel at liberty to dispose of the assets of Germany and arrange their commercial and financial relations with Germany without regard to the interests of the United States."

The Provisions of Part I of the Treaty of Versailles mentioned in subdivision (2) of Article II of this treaty comprise the Covenant of the League of Nations, and the United States now definitely provides that it shall not be bound by them, but it reserves to itself entire freedom of action for the future by the further provision that any action taken by the League of Nations or by the Council or Assembly thereof may become binding upon the United States if it expressly gives its assent thereto.

The provisions of the Treaty of Versailles mentioned in sub-division (3) of Article II of this treaty, with respect to which the United States stipulates that it assumes no obligations, relate to the following subjects:

Part II.—Boundaries of Germany. Part III.—Political Clauses for Europe. Part IV, Sections 2 to 8, relate to the disposal of Germany's former interests in China, Siam, Liberia, Morocco, Egypt, Turkey and Bulgaria, and the renunciation in favor of Japan of all her rights, title and privileges in Shantung. Part XIII comprises the Labor Sections.

On October 18, 1921, the Senate of the United States, in the exercise of its constitutional prerogative, adopted a resolution advising and consenting to the ratification of this treaty, seventy-two Senators being recorded

[1] Issue for July, 1920, p. 384.

in favor of ratification and twenty-three opposed, subject to the understanding, however, "that the United States shall not be represented or participate in any body, agency, or commission, nor shall any person represent the United States as a member of any body, agency, or commission in which the United States is authorized to participate by this treaty, unless and until an act of the Congress of the United States shall provide for such representation or participation," and subject also to the further understanding "that the rights and advantages which the United States is entitled to have and enjoy under this treaty embrace the rights and advantages of nationals of the United States specified in the joint resolution or in the provisions of the Treaty of Versailles, to which this treaty refers."

Neither of these reservations is of such a character as to delay the ratification of the treaty as they neither change the text of the treaty nor affect its meaning, so far as Germany is concerned. The first reservation merely determines the manner in which certain provisions of the treaty are to be carried out on the part of the United States as a matter of domestic policy and procedure, which in no way affects the rights of Germany under the treaty, and the other reservation is simply a declaration that the treaty shall be understood to mean precisely what it would naturally be understood to mean without that declaration, for the rights reserved by the treaty for the benefit of the United States unquestionably include the rights of its nationals.

We are thus assured of the reëstablishment of an official status or peace with Germany by means of a treaty of peace rather than merely by unilateral declarations to that effect through the Congressional Peace Resolution, on the part of the United States, coupled with the declaration of the termination of the state of war, in the Treaty of Versailles, on the part of Germany.

In the situation which grew out of the conflict between the Senate of the United States and the Executive branch of the Government, with reference to the ratification of the Treaty of Versailles, during the last Administration, the Congressional Peace Resolution was adopted, by force of circumstances rather than by preference, as an alternative for a treaty of peace. The resolution furnished an effective solution of the problem presented by the deadlock formerly existing between the coördinate branches of the treaty-making power under our Constitution, but it was not regarded as an entirely satisfactory method of reëstablishing peace with Germany, and was generally understood to have been adopted rather as a substitute for a treaty of peace in case a satisfactory treaty could not be secured.

The present Administration, therefore, is to be congratulated upon its notable accomplishment of negotiating a treaty of peace which has received the sanction of the Senate, as required by the Constitution to make it effective.

CHANDLER P. ANDERSON.

THE ELECTION OF JUDGES FOR THE PERMANENT COURT OF INTERNATIONAL JUSTICE

The Peace Conference meeting at The Hague in 1907 adopted a project of thirty-five articles dealing with the organization, jurisdiction and procedure of a Court of International—then called "Arbitral"—Justice. Owing to the fact that the project was new to most of the delegates, inasmuch as the only delegation instructed to lay it before the conference was the delegation of the United States, and owing also to the difficulty of the subject and the fact that the conference was occupied with many other and important matters, it was found impossible at that time and under those circumstances, to devise a method of appointing the judges generally acceptable to the nations. The conference therefore approved the project without an article dealing with the appointment of judges, and recommended the Powers to devise an acceptable method, and thus to constitute the Court.

The fourteenth article of the Covenant of the League of Nations took up the project where the Second Hague Conference left it, and directed the Council of the League to formulate a plan. In pursuance of this direction, the Council invited, in the course of 1920, a select body of jurists from different countries to prepare such a plan. They met at The Hague and devised a plan for the appointment of the judges acceptable to the Council, the Assembly of the League, and the nations at large.

The draft project of the court which the jurists prepared was not so fortunate. The Council made some alterations, and the Assembly of the League made many more, with the result that the document as finally adopted was to most intents and purposes similar to, if not identical with, the draft of 1907. The two great steps, however, had been taken; the acceptance of the plan of 1907 with certain modifications, and the method of appointing the judges which the conference of 1907 failed to devise.

The third and final step was taken on the 14th and 16th of September, when the judges and deputy judges of the court were elected at Geneva.

The project provides that the court shall for the present consist of eleven judges and four deputy judges; that each national group of the Permanent Court at The Hague shall recommend not more than four persons, of whom not more than two shall be of their own nationality; that the names of such persons shall be sent to the Secretary-General of the League, who shall lay them before the Assembly and the Council; that the Assembly and the Council shall proceed separately and independently of one another, to elect the requisite number of judges and deputy judges, bearing in mind that the judges should represent the main forms of civilization and the principal legal systems of the world; that upon a failure of the Assembly and Council to elect the requisite number of persons, each of whom is to receive an absolute majority of votes in the Assembly and Council, a con-

ference committee consisting of six members, three appointed by the Assembly and three by the Council, is to be formed at any time after the third ballot, which committee shall, by majority, recommend from the list of persons proposed, one or more for the positions unfilled, or unanimously, any one beyond the list of the Assembly and Council, for their respective acceptance, or, if the conference committee is satisfied that its recommendations will not be accepted by the Assembly and the Council, the members of the court already elected choose the balance of the court from among the candidates voted for in the Assembly or Council. In case of a tie, the vote of the eldest judge decides.

It must be a source of consolation to the advocates of an international court of justice that this method of election was tried, tested and was not found wanting. On the first ballot Messrs. Altamira of Spain, Anzilotti of Italy, Barbosa of Brazil, de Bustamante of Cuba, Lord Finlay of Great Britain, Loder of the Netherlands, Oda of Japan, and Weiss of France received an absolute majority, both in the Assembly and in the Council, sitting and acting separately. They were, therefore, elected. Mr. Moore, of the United States, was elected on the second ballot, and Messrs. Nyholm of Denmark, and Huber of Switzerland, on the sixth.

Unfortunately, the two bodies were unable to agree upon two of the candidates proposed, the Assembly choosing the distinguished American publicist, Alejandro Alvarez, of Chile, who, however, did not receive the absolute majority of the Council, and the Council choosing the distinguished Belgian publicist, Baron Descamps, who, likewise, failed to receive the absolute majority of the Assembly. Neither the Assembly nor the Council was willing to recede. The deadlock was broken by the selection of Mr. Huber.

Four deputy judges were to be appointed, and Messrs. Negulesco of Roumania, Wang of China, and Yovanovitch of Jugoslavia received the absolute majority in both the Assembly and the Council. The Assembly, however, voted for Mr. Alvarez, of Chile, and the Council, for Baron Descamps of Belgium. Neither body yielding its preference, a conference committee was appointed, which recommended Mr. Beichmann of Norway, who was thereupon elected by the Assembly and the Council, and the court was complete. It is ready to meet at The Hague to take up and to decide questions submitted to it by litigating nations, according to due process of law.

It was hoped that Mr. Elihu Root, who, as Secretary of State, directed the American delegation to the Second Hague Conference to propose an international court of justice, and who, as a member of the Advisory Committee of Jurists at The Hague in 1920, was responsible for the method of appointing the judges, would accept a seat upon the world's first International Court of Justice. He declined the proffered post because of age, although he is younger than the British representative. In his place the Assembly and Council naturally turned to Mr. John Bassett Moore.

The court is an admirable body, representing the different forms of civili-

zation and systems of law, and calculated not only to do justice between nations without fear or favor, but to their satisfaction.

One dream of the ages has been realized in our time.

JAMES BROWN SCOTT

DRAGO AND THE DRAGO DOCTRINE

Luis Maria Drago, the distinguished Argentine jurist, publicist and statesman, best known to our world as the author of the so-called Drago Doctrine, died during the past summer on June 9, 1921, in his sixty-third year, having been born on May 5, 1859, at Buenos Ayres. Trained as an advocate, the author of various legal works, occupant of important judicial positions, professor of civil law, elected this very summer an Associate of the Institute of International Law, his death is a grievous loss to his country, to the science of public law and to the world of letters.

His advocacy of a principle which would limit the use of force between states for the recovery of contract debts is of special interest to us because in a sense it was intended as a substitute for our Monroe Doctrine. That doctrine was originally founded on the theory that European intervention in the affairs of the Latin-American states was dangerous to our own peace and safety and to the integrity of our institutions. But it grew with our growth in power and has become a piece of paternalism which the states to the south of us resent. On the other hand, in spite of our disclaimers, it has been hard to avoid a certain responsibility for the conduct of the states which we endeavored to protect, a responsibility decidedly embarrassing.

So that there was a motive on both sides for desiring that instead of a protective policy there should be a self-denying ordinance in treaty form, which would bind European states not to intervene at least except in the plainest case of denied justice, and in no case on financial grounds.

Señor Charles Calvo must have the credit of being first in trying to bring this about. The Calvo Doctrine, however, was too broad, too thoroughgoing. It denied the validity of both diplomatic and armed intervention by one state in the affairs of another, for the enforcement of "any or all private claims of a pecuniary nature, at least such as are based upon contract or are the result of civil war, insurrection, or mob violence,"[1] claiming that foreigners are not entitled to greater protection than nationals in case of injury. Our own practice negatives this theory; it was narrowed and simplified by Dr. Drago.

The Drago Doctrine forbade the forcible collection of public debts. It was contained in a note to the Argentine Minister at Washington, written by Drago as Minister of Foreign Affairs. It was called out by the threat-

[1] Hershey, Int. Law. p. 162, n.

ened intervention in Venezuela of three European Powers. It was widely commented on. This was in December, 1902.

Arguing that forcible collection of debts implies territorial occupation; that such occupation easily entails conquest; that a state is bound to pay its debts but may choose its own time and convenience, that any other course is in derogation of State sovereignty, Dr. Drago suggested that the United States recognize the principle that "the public debt of an American state can not occasion armed intervention, nor even the actual occupation of the territory of American nations by a European Power." Secretary Hay answered in a non-committal way, but President Roosevelt in his message of December 5, 1905, gave this doctrine his warm approval, asserting that our own practice had always been in accord with it. For a full discussion of these two doctrines the reader is referred to Professor Hershey's article on the subject in the very first number of this JOURNAL.

The third Pan-American Conference in Rio de Janeiro, in 1906, presented this subject to the attention of the Second Hague Conference with such effect, backed as it was by the United States, that the Conference adopted a convention respecting the limitation of the employment of force for the recovery of contract debts. The gist of this is found in Article 1 as follows:

> The contracting Powers agree not to have recourse to armed force for the recovery of contract debts claimed from the government of one country by the government of another country as being due to its nationals. This undertaking is, however, not applicable when the debtor state refuses or neglects to reply to an offer of arbitration, or after accepting the offer, prevents any compromise from being agreed on, or after the arbitration fails to submit to the award.

This was by 1914 ratified by only seventeen out of the forty-five participants in the Conference and there were many reservations to the signatures. Yet it is a long step forward toward the avoidance of conflicts between states on pecuniary grounds. It is neither the Calvo nor the Drago Doctrine, being narrower than either and conditionally authorizing the use of force in debt collection as an eventuality. But both the Calvo and Drago Doctrines led up to it, particularly the latter.

With the German fleet at the bottom of Scapa Flow, a limitation of armament conference on the *tapis*, and the world in a chastened frame of mind, probably the efforts of Dr. Drago are nearer fruition than they ever were during his lifetime.

T. S. WOOLSEY.

ERNEST NYS, 1851-1920

In the death of M. Ernest Nys on September 5, 1920, the science of international law lost one of its most fruitful contributors, internationalism a leading advocate, the University of Brussels perhaps its most distinguished professor, and Belgium one of her most eminent jurists and publicists.

Professor Nys was born at Coutrai, Belgium, in 1851, and received his higher education at the Universities of Ghent, Heidelberg, Leipzig, and Berlin. Later he was granted honorary degrees by the Universities of Oxford, Edinburgh, and Glasgow. He began life as a member of the bench at Antwerp—his judicial career culminating in his appointment as member of the Permanent Court of Arbitration at The Hague, and President of the Chamber in the Court of Appeals at Brussels.

It was, however, in pursuance of his duties as Professor of International Law at the University of Brussels, and as one of the editors of the *Revue de Droit International et de Législation Comparée*, that he was most active as a contributor to the science of international law. For many years preceding the Great War, the files of the *Revue* bear witness to his prolific researches in the history of international law, more particularly during the Middle Ages. In 1894 many of these studies were published in book form under the title *Les Origines du Droit International*. This interesting collection was followed by two others (in 1896 and 1901 respectively) bearing the title *Etudes de Droit International et de Droit Public*. These volumes constitute a treasure containing a mine of historical research for any library that possesses them.

It would be impossible for us to give anything like a complete résumé or even bibliography of the many and various writings of Professor Nys. They include, for example, a valuable introduction to the text and translation of Francisci de Victoria's *De Indis et de jure belli relectiones*, published by the Carnegie Institution at Washington, in 1917. Suffice it to say that the work of Professor Nys as an authority on international law culminated in a sense in the publication (in three volumes, 1904-06) of a treatise entitled *Le Droit International, Les Principes, Les Theories, Les Faits*. This work was characterized by great learning, originality and vigor, and is a distinct contribution to the history and theoretical development of our science.

M. Nys was a distinguished member of a number of learned societies, including the Institute of International Law, of which he was a very active member, and the American Society of International Law, of which he was one of the few honorary members.

The writer of this memorial notice never had the good fortune of personal contact with Professor Nys; but if a deep and sympathetic appreciation of a man's writings confers a title of friendship, then one may perhaps be permitted to express a strong sense of personal sorrow over the passing of this wise, cultivated and liberal spirit. Certainly the cause of internationalism has suffered a great loss.

AMOS S. HERSHEY.

CURRENT NOTES

THE NOBEL PEACE PRIZE

With the advent of peace in Europe, consequent upon the deposit of ratifications of the Treaty of Versailles on January 10, 1920, the trustees of the Nobel Peace Prize were able to consider in an atmosphere of peace the services rendered to the cause of peace.

The peace prize was not awarded in 1914, 1915 or 1916. It was felt that the award for 1917 might properly be made to the International Red Cross of Geneva. This was accordingly done. No further award was made until December 10, 1920, when the peace prize for the year 1919 was awarded to Woodrow Wilson, then President of the United States, and for 1920 to Léon Bourgeois, of France.

The awards to these eminent publicists are not difficult to understand. Mr. Wilson had, before the entry of the United States into the World War, labored incessantly to bring the war to a close. After the armistice of November 11, 1918, he sought to secure a peace which would, in his opinion, render less likely, if it could not wholly prevent, the recurrence of future wars.

The case of Mr. Bourgeois, if not stronger, extends over a longer period of years. His advocacy of arbitration at the First Hague Peace Conference of 1899, was largely responsible for the acceptance of the Pacific Settlement Convention of that body. To his championship of peaceful settlement at the Second Hague Peace Conference of 1907, is likewise due in large measure whatever was accomplished in that line at that gathering, in which Germany blocked, as it seemed to many, every approach to peace. Mr. Bourgeois' advocacy of the League of Nations was the advocacy in concrete form of an intimate association of nations of which he had been the champion for many years.

That the award to each falls within the scope of the Nobel Prize is evident from the following extract from the will of Alfred Nobel, which creates, "a fifth [prize] to the person who shall have done most or the best work in the interest of the brotherhood of peoples, of the abolition or reduction of standing armies, as well as of the formation and propagation of peace congresses."

It is interesting to note the manner in which each recipient acknowledged the prize. Thus, Mr. Wilson said in a letter read by the American Minister to Norway:

> In accepting the honor of your award, I am moved by the recognition of my sincere and earnest efforts in the cause of peace, but also by the very poignant humility before the vastness of the work still called for by this cause.

May I not take this occasion to express my respect for the far-sighted wisdom of the founder in arranging for a continuing system of awards? If there were but one such prize, or if this were to be the last, I could not, of course, accept it, for mankind has not yet been rid of the unspeakable horror of war.

I am convinced that our generation has, despite its wounds, made notable progress, but it is the better part of wisdom to consider our work as only begun. It will be a continuing labor. In the definite course of the years before us there will be abundant opportunity for others to distinguish themselves in the crusade against the hate and fear of war.

There is, indeed, a peculiar fitness in the grouping of the Nobel rewards. The cause of peace, and the cause of truth are of one family. Even as those who love science and devote their lives to physics or chemistry, even as those who create new and higher ideals for mankind in literature, even so with those who love peace, there is no limit set. Whatever has been accomplished in the past is petty compared to the glory of the promise of the future.[1]

Mr. Bourgeois received the announcement while in attendance upon the League of Nations, and was informed by the President of the Assembly of the honor conferred upon him. In reply, he said:

Mr. President and my dear colleagues, the emotion which I feel prevents me from replying at length to the touching words of the President. I feel profoundly the unanimity with which the Assembly has associated itself with the President's words, and I will only make a very short reply. But it is a reply which comes from the bottom of my heart. If I have been greatly honored in being awarded this prize, I wish to attribute all the honor to my country for the very high distinction. In choosing me the Nobel Committee chose a Frenchman because it wished to point out and distinguish particularly the part played by France in putting forward the ideas which are common to all of us—France, the soldier of Right, whose sacrifices have surpassed all other nations. If France has thus acted in defending its liberty during the War, it will do the same in peace on behalf of justice which is the foundation of all peace. I am glad that the news arrived at a time when we were met together here at Geneva, for thus it forms a further encouragement to us to continue in our labors and to lay the indestructible foundation on which the peace and the freedom of humanity depend.[2]

Whether we be advocates or opponents of the League of Nations, it must be admitted that President Wilson brought it into being, and whether we approve or disapprove the part which Mr. Bourgeois took in framing the Covenant and in directing the League of Nations, we must acknowledge that for many years, in season and out of season, he stood for the Hague Conferences and the juridical organization of the society of nations. The good in the work of each will survive. The ultimate form which a league, or an association, or a society of nations shall assume, the future alone can decide.

JAMES BROWN SCOTT

[1] New York Times, Dec. 11, 1920, p. 11.

[2] Provisional Verbatim Record, 19th Plenary Meeting, First Assembly of the League of Nations, Geneva, Dec. 11, 1920, pp. 2-3.

FEDERAL LEGISLATION UPON CIVIL AERONAUTICS

Within the past year a large number of bills have been introduced in Congress to regulate the operation of civil aircraft in interstate and foreign commerce. The most recent of these is the bill (Senate 2448) of Senator Wadsworth, chairman of the Military Affairs Committee, which provides for the establishment of a Bureau of Aeronautics in the Department of Commerce, administered by a Commissioner of Civil Aeronautics. The Commissioner is given the power, with the approval of the Secretary of Commerce, to issue regulations having the force of law, to license pilots and register and license civil aircraft and airdromes; to establish the conditions under which civil aircraft may be used for transporting persons or property; to prohibit navigation over military, naval and postal areas; and to establish the rules of traffic applicable to air routes and stations. In addition to the exercise of these delegated legislative functions, the bill proposes that the Commissioner shall foster civil aeronautics by the establishment of air stations, meteorological services and signaling systems, as well as by research and the collection and publication of information upon a broad scale. The Commissioner is also charged with the duty of carrying into effect international aeronautical agreements and treaties.

The proposed legislation has evidently taken account of the difficulties in the way of complete national control of aerial navigation. It derives its authority under the interstate commerce clause of the Constitution and not under the treaty-making power or the admiralty clause; but the scope of national control is enlarged by extending its application to the airspace above navigable streams, rivers and waters of the United States, post roads and post routes, the District of Columbia, the Territories, dependencies and other areas over which the Federal Government has jurisdiction.

The necessity for national regulation has already been referred to in this JOURNAL. The special committee of the American Bar Association at its meeting at Cincinnati in September, recognized the imperative need of such legislation, and stated "that the law respecting aeronautics is the one fundamental vital problem of the actual commercial development of the art at the present time" (p. 27). While the committee has performed a valuable public service in emphasizing the importance of observing the constitutional requirements in adopting any new legislation upon aeronautics, it would appear to be most unfortunate if *all* national legislation upon the subject were to be deferred until an amendment to the Constitution be adopted granting complete jurisdiction to the Federal Government over aerial navigation. The committee seems to have favored this delay, and, indeed, it was upon this point that the report, although finally adopted, met with strong opposition when presented at Cincinnati. We believe, in

this particular, the committee has attempted a counsel of perfection, which, if followed, might meanwhile endanger the position of the United States in aeronautics. *Le mieux est l'ennemi du bien.*

The present bill should be the subject of careful consideration in respect of the grant of powers to the Federal courts. Upon constitutional grounds, it appears to be couched in terms much too general. Again, the exemption granted to owners and operators from liability for damages beyond the value of the aircraft, by a limited-liability clause analogous to that now applicable to sea vessels, will doubtless also meet with opposition. The policy of the bill in this respect differs from similar legislation in Great Britain under which the owner or charterer is held liable for actual damage caused by his aircraft, without requiring an innocent plaintiff to prove negligence. Of course, the stringent liability of the British Act does not apply to the claims of passengers or shippers.

Space does not permit of a more elaborate discussion of the bill. It will probably emerge only after careful consideration of the constitutional questions. The extent to which intrastate navigation must conform to Federal requirements so as not to interfere with, or create an undue burden upon interstate or foreign aerial commerce, may safely be left to the courts. The scheme of national regulation, whatever it ultimately proves to be, will undoubtedly form the basis of our treaty relations, and an early solution of the problems in some acceptable fashion, even though short of *ultima desiderata*, will be heartily welcomed.

ARTHUR K. KUHN.

THE INSTITUTE OF POLITICS

The first session of the Institute of Politics at Williamstown, Mass., notice of which was given in an earlier number of this JOURNAL,[1] too place from July 28 to August 27, last. The plan of the Institute was the idea of President Garfield of Williams College. Having no inclination to establish a summer school or summer session at the college along the lines which have become familiar in this country, he felt that there was a great opportunity to make use of the facilities of the college for a summer gathering to be devoted to the consideration of subjects of special interest. Prior to the war, he had outlined a plan for an institute of politics to be held during the college vacations. This the trustees of Williams College approved, offering the use of the college buildings for the purpose. With the entrance of the United States into the World War, it was impossible to carry the plan into execution. After the war was over, Dr. Garfield felt that the time was ripe for the realization of his idea. It needed, however, financial support for its accomplishment. This was secured through the generosity of Mr. Bernard M. Baruch of New York, who offered to provide for the maintenance of the

[1] January, 1921, p. 78.

Institute along the lines devised by Dr. Garfield for a period of three years. Mr. Baruch's gift was made upon the understanding that it should remain anonymous. It was not until toward the close of the Institute that, after repeated requests, the generous donor consented to permit his identity to be disclosed.

With this financial assurance, Dr. Garfield selected a Board of Advisors to assist him in the organization and in the preparation of specific plans for the sessions of the Institute. The Board of Advisors so selected consisted of the Hon. William Howard Taft as Honorary Chairman, Presidents E. A. Alderman of the University of Virginia, E. A. Birge of the University of Wisconsin, H. P. Judson of the University of Chicago, Professors A. C. Coolidge of Harvard University, P. M. Brown of Princeton University, J. B. Moore of Columbia University, J. S. Reeves of the University of Michigan and W. W. Willoughby of the Johns Hopkins University, and Dr. James Brown Scott of the Carnegie Endowment for International Peace.

The opening exercises held in Grace Hall, the beautiful auditorium of Williams College, included an address of welcome by President Garfield and addresses by Chief Justice Taft, President Lowell of Harvard University, and Mayor Peters of Boston.

The character of the exercises and the enthusiasm which they evoked were an excellent augury of the success of the first session. More than 150 men and women were enrolled as members of the Institute, about two-thirds of whom were members of college and university faculties. The representation was national in scope, institutions from Maine to Alabama and to the Pacific Coast being represented. Provision had been made for the housing of all the members in the comfortable dormitories of the College, and all met together for meals in the College Commons. This last proved to be one of the pleasantest features of the Institute. The charming surroundings of the College town and the Berkshire Hills, with the glorious weather throughout the session left nothing to be desired as to arrangements or conditions.

Invitations to become members of the Institute had been sent to men and women especially interested in the field of modern European history, international law and diplomacy, and economics. Naturally the majority of those responding affirmatively were associated with the various colleges and universities of the United States. Invitations, however, had not been limited to those in academic life, but were also extended to and accepted by a number of persons engaged in journalism, banking and other fields.

It had been decided to have the first session devote itself to international questions, considered especially with reference to the World War and the treaties of peace. The work of the Institute was to be of two kinds: lecture courses by distinguished lecturers from abroad, and round table conferences, conducted according to seminar methods, upon specific topics in the field of international relations.

The subjects of the various lecture courses and the lecturers were as follows:

I. "International Relations of the Old World States in their Historical, Political, Commercial, Legal, and Ethical Aspects, including a Discussion of the Causes of Wars and the Means of Averting Them." The Right Honorable Viscount James Bryce.

II. "Russia's Foreign Relations During the Last Half Century." The Right Honorable Baron Sergius A. Korff, former Vice-Governor of Finland.

III. "Near Eastern Affairs and Conditions." The Honorable Stephen Panaretoff, Minister from Bulgaria to the United States.

IV. "The Place of Hungary in European History." The Right Honorable Count Paul Teleki, former Premier of Hungary.

V. "Modern Italy: Its Intellectual, Cultural and Financial Aspects." The Honorable Tomasso Tittoni, President of the Italian Senate and former Ambassador from Italy to Great Britain and France.

VI. "The Economic Factor in International Relations." M. Achille Viallate, Professor in the *École Libre des Sciences Politiques.*

The very distinguished publicist, Dr. Luis M. Drago, of Argentina, had also accepted an invitation to deliver a course of lectures upon Latin-American problems. It was a matter of very keen regret that Señor Drago died shortly before the date set for his leaving for this country. For this reason, unfortunately, Latin-America was not represented among the lecturers.

Each course consisted of seven lectures. Arrangements have been made for the immediate publication of all of them in book form, each course to be comprised in a volume.

The Round-Table Conferences and their leaders were as follows:

I. "The Balkan Question." Professors A. C. Coolidge and R. H. Lord of Harvard.

II. "The Reparations Question." Norman H. Davis, former Under Secretary of State.

III. "Treaties of Peace, especially the Treaty of Versailles." Professor J. W. Garner, University of Illinois.

IV. "Boundaries of New Europe." Professor C. H. Haskins, of Harvard and Major Lawrence Martin of the Department of State.

V. "Fundamental Concepts in International Law in Relation to Political Theory and Legal Philosophy." Professor J. S. Reeves, University of Michigan.

VI. "Latin American Questions." The Honorable L. S. Rowe, Director General of the Pan-American Union.

VII. "Tariffs and Tariff Problems." Professor F. W. Taussig of Harvard.

VIII. "Unsettled Questions in International Law." Professor G. G. Wilson of Harvard.

Each of the round-table groups comprised from twenty to twenty-five members and from them the public was excluded. Opportunity was thus afforded for informal presentation and discussion. Interest in the particular questions considered was greatly increased by the frequent presence of the lecturers, who participated in the discussions. This was particularly the case in the round-table conducted by the Hon. Norman H. Davis upon the reparations question, of which M. Casenave, the French High Commissioner, was a member, and of the round-tables upon the new states of Central Europe and upon Latin-American questions in both of which Lord Bryce took an active part and to which he contributed greatly. Notwithstanding the popular interest shown in the public lectures held in Grace Hall, which was frequently filled to its capacity, it was generally conceded that the spirit of the Institute was best shown in these informal round-table gatherings, which were conducted so as to insure studious effort on the part of each member and to invite the frankest expressions of individual opinion.

The plan of the Institute was such as to eliminate at every point possible the opportunity for propaganda in behalf of particular causes or of institutions. The points of view of the various lecturers differed very widely. While in some instances the lecturers presented a more or less elaborate exposition of particular nationalistic positions, it soon became evident that each felt perfectly free to set forth his own personal position. The Institute of Politics had no propaganda to encourage or cause to advocate, except the full, free, and rational discussion of international problems. The same may be said of the round-table conferences. Throughout the session a spirit of enthusiastic interest and of respect for divergent opinions was manifest.

The Institute closed with a banquet at which the principal speaker was the Honorable Elihu Root, who in eloquent words acclaimed the purpose and results of the first session and showed the urgent necessity, in these days when democracy claims control of international affairs, that such control proceed from an enlightened and instructed democracy.

The munificence of Mr. Baruch having made possible the continuation of the Institute for at least two more sessions, plans have proceeded to this end; and it is expected that a programme for next year's session will be announced by the first of January. The subject for the session of 1922 will also be international relations, with more particular attention to the problems of the Far East. It is probable that the arrangements for the next session will be similar to those of the last and that, while the membership of the Institute will again be by invitation, and therefore necessarily limited, the number of the round-table conferences will be somewhat increased. The early announcement of the session of 1922 ought to make it possible for many men and women specially interested in the field of international relations and international law to be present.

The first session of the Institute of Politics was an unqualified success. In 1922 it will afford an opportunity for the serious consideration of international problems such as is rarely offered.

CHRONICLE OF INTERNATIONAL EVENTS

For the Period May 16—August 31, 1921

WITH REFERENCES

Abbreviations: *Adv. of peace*, Advocate of peace; *Bundesbl.*, Switzerland, Bundesblatt; *Clunet*, Journal du droit international; *Cmd.*, Great Britain, Parliamentary Papers; *Commerce Reports*, U. S. Commerce reports; *Cong. Rec.*, Congressional Record; *Contemp. R.*, Contemporary Review. *Costa Rica, Ga.*, La Gaceta; *Covenant*, The Covenant (London); *Cur. Hist.*, Current History (New York Times); *Daily digest*, Daily digest of reconstruction news; *D. G.*, Diario do Governo (Portugal); *D. O.*, Diario official (Brazil); *Deutsch. Reichs.*, Deutscher Reichsanzeiger; *E. G.*, Eidgenossiche gesetzblatt (Switzerland); *Edin. Rev.*, Edinburgh Review; *Europe*, L'Europe Nouvelle; *Evening Star* (Washington); *Figaro*, Le Figaro (Paris); *G. B. Treaty series*, Great Britain Treaty series; *Ga. de Madrid*, Gaceta de Madrid; *G. U.*, Gazetta Ufficiale (Italy); *Guatemalteco*, El Guatemalteco; *I. L. O. B.*, International Labor Office Bulletin; *J. O.*, Journal officiel (France); *L. N. M. S.*, League of Nations Monthly Summary; *L. N. O. J.*, League of Nations, Official Journal; *L. N. T. S.*, League of Nations, Treaty series; *Lond. Ga.*, London Gazette; *Monit.*, Moniteur Belge; *Nation (N. Y.)*; *N. Y. Times*, New York Times; *Naval Inst. Proc.*, U. S. Naval Institute Proceedings; *P. A. U.*, Pan-American Union Bulletin; *Press Notice*, U. S. State Dept. Press Notice. *Proclamation*, U. S. State Dept. Proclamation; *Rev. int. de la Croix-Rouge*, Revue international de la Croix-Rouge; *Staats.* Netherlands Staatsblad; *Temps*, Le Temps (Paris); *Times*, The Times (London); *Wash. Post*, Washington Post.

January, 1921.

30 Switzerland. Amendment to Article 89 of the federal constitution providing for referendum on treaties, was accepted by large majority vote of the people. *Am. Pol. Sci. Rev.*, Aug., 1921, p. 423.

February, 1921.

15 (?) Argentina—Italy. Ratification of treaty concerning indemnification for labor accidents exchanged in Buenos Aires. *P. A. U.*, July, 1921, p. 90.

March, 1921.

13 Italy—Turkey. Economic agreement signed at London. Text: *Temps*, May 28, 1921, p. 2.

16 Germany—Sweden. Switzerland abrogated treaty of commerce and navigation of May 2, 1911, effective March 16, 1921. *Reichs G.*, March 23, 1921, p. 234.

28 German—Siamese Mixed Arbitral Tribunal. Regulations of procedure published. Text: *Reichs G.*, April 1, 1921, p. 345.

April, 1921.

14 War Dates. Reparations commission announced official dates on which periods of belligerency began, according to Art. 232 of Treaty of Versailles: Italy, May 27, 1915; Portugal, March 9, 1916; Greece, June 27, 1917; Czecho-Slovakia, Oct. 28, 1918. *Temps,* April 16, 1921, p. 1.

15 Morocco (French protectorate)—Switzerland. Agreement concerning regulation of relations between the two countries promulgated in Switzerland. *E. G.,* April 20, 1921, p. 269.

18 Belgium—Czecho-Slovak Republic. Declaration signed providing for exchange of census information. *Monit.,* May 16/18, 1921, p. 4080.

19 Belgium—Roumania. Belgium denounced commercial convention of June 5, 1906, effective April 19, 1922. *Monit.,* May 11, 1921, p. 3908.

20 *to June* 3. Lithuanian-Polish Conference. Held in Brussels under Presidency of Paul Hymans. *Times,* June 4, 1921, p. 9.

22 Great Britain—Norway. Agreement relating to suppression of capitulations in Egypt signed at Christiania. *G. B. Treaty series,* 1921, No. 10. *Cmd.* 1285.

27 Far Eastern Republic. Constitution adopted. Text: *Nation (N. Y.),* Sept. 14, 1921, p. 300.

29 Brazil—Uruguay. Decree issued in Uruguay putting in force the regulations concerning the boundary commission, provided by convention of December 27, 1916. *D. O. (Uruguay),* May 5, 1921, p. 4548.

30 Malta. Self-government granted the island. *Cur. Hist.,* July, 1921, *14:* 607.

May, 1921.

5 Austria—Germany. Proclamation issued in Germany renewing a series of agreements between Germany and separate German states and Austria and Austria-Hungary. List of agreements: *Deutsch. R.,* July 13, 1921, No. 161.

5 China. Dr. Sun Yat-Sen became President of Southern Chinese Republic and issued appeal for recognition to all foreign powers. Text of proclamation: *Cur. Hist.,* Aug., 1921, *14:* 749.

12 Hungarian Peace Treaty, Trianon, June 4, 1920. British House of Lords approved ratification. *Temps,* May 13, 1921, p. 1.

13 (?) Afghanistan—Turkey. Treaty signed at Moscow on March 1 ratified. Summary: *Temps,* May 14, 1921, p. 4.

13 Austria—Belgium. Convention of October 4, 1920 relative to application of Sec. III of Part X (Economic Clauses) of Treaty of Saint-Germain promulgated in Belgium. *Monit.,* June 26, 1921, p. 5225.

14 Austria—France. Treaty signed at Paris August 3, 1920, and ratified

by both countries May 12, 1912, promulgated in France. *J. O.*, May 15, 1921, p. 5811.

14 FRANCE—NORWAY. Decree issued in France publishing the convention signed April 23, 1921, relative to wines and intoxicating liquors and putting it into force pending its ratification. *J. O.*, June 18, 1921, p. 6958.

14 GREECE—UNITED STATES. Treaty of commerce and navigation signed October 18, 1920, promulgated in Greece. [*Greece. Official Gazette*] May 11/24, 1921.

15 AUSTRIAN PEACE TREATY, Saint Germain, September 10, 1919. Ratification deposited in Paris by Japan. *J. O.*, May 15, 1921, p. 5810.

15 AUSTRIAN PEACE TREATY, Saint Germain, September 10, 1919. Ratified by the Chamber of Deputies of Portugal. *Temps*, May 16, 1921, p. 1.

15 BULGARIAN PEACE TREATY, Neuilly, November 27, 1919. Ratification deposited at Paris by Czecho-Slovakia. *J. O.*, May 15, 1921, p. 5810.

15 BULGARIAN—RUMANIAN BOUNDARY COMMISSION. Completed its inquiry regarding the Dobroudjan frontier. *Temps*, May 16, 1921, p. 2.

15 CZECHO-SLOVAK TREATY, Saint Germain, September 10, 1919. Ratifications deposited in Paris by Japan. *J. O.*, May 15, 1921, p. 5810.

15 RUMANIAN TREATY, Paris, December 9, 1919. Ratified by Japan. *J. O.*, May 15, 1921, p. 5810.

15 SERB, CROAT, SLOVENE TREATY, St. Germain, September 10, 1919. Ratifications deposited in Paris by Japan. *J. O.*, May 15, 1921, p. 5810.

17 BELGIUM—LUXEMBURG. Agreements signed at Brussels, by which Belgium became protector of Luxemburg. *Cur. Hist.*, Aug., 1921, *14:* 869. Summary: *Europe*, June 18, 1921, p. 804.

18 BULGARIA—SERB, CROAT, SLOVENE STATE. Agreement reached concerning delivery of cattle from Bulgaria to Jugo-Slavia as provided by Treaty of Neuilly. *Times*, May 19, 1921, p. 9.

18 CANADA—WEST INDIES. Trade agreement ratified by Barbados Islands to go into effect July 1. *Canada. Dept. of Customs and Excise.* Memo., June 21, 1921.

18 FRANCO—PERUVIAN ARBITRAL TRIBUNAL. Agreement signed fixing upon October 1, 1921, as date of meeting. *J. O.*, May 29, 1921, p. 6312.

18 POLAND—UNITED STATES. Appeal of Poland of May 11 for support in upper Silesian controversy and American reply of May 14 made public. Text of both notes: *Press notice*, May 18, 1921; *Wash. Post*, May 19, 1921, pp. 1, 4.

19 CABLE LICENSE BILL. S. 535, giving President authority over cable landings on American shores, signed by President Harding. *Cong. Rec.*, June 1, 1921, p. 1940.

19 FRANCE—RUSSIA. Agreements of April 1, 1874 relating to consular jurisdiction and regulation of succession denounced by France, to take effect May 19, 1922. *J. O.*, May 19, 1921, p. 5890.

19 INTERNATIONAL HEALTH CONFERENCE. Convened at Copenhagen with representatives from Denmark, Norway, Sweden, Finland, Germany, and Great Britain. *Temps*, May 22, 1921, p. 6.

19 SPAIN. New provisional tariff law went into effect. *Cur. Hist.*, Aug., 1921, *14:* 848.

21 AUSTRIA—RUMANIA. Rumania made formal protest to Austria against proposed plebiscite on fusion with Germany. *N. Y. Times*, May 22, 1921, p. 1.

21 CHINA—GREAT BRITAIN. China's protest to Great Britain against Anglo-Japanese alliance made public. Text: *N. Y. Times*, May 20, 1921, p. 14.

22 CZECHO-SLOVAK REPUBLIC—FRANCE. Decree issued putting into effect the commercial convention signed at Paris, November 4, 1920. Text: *J. O.*, May 24, 1921, p. 6051.

23 *to July* 16. GERMAN WAR CRIMINALS. Trials held in Supreme Court at Leipzig. *Fortnightly Review*, Sept., 1921, p. 417.

23 TRADING WITH THE ENEMY ACT. War Trade Board Section of the Department of State announced amendment to General Enemy Trade License, effective May 23, authorizing all persons in United States to trade and communicate with all persons with whom trade and communication is prohibited by the Trading with the Enemy Act, subject to certain limitations. *War Trade Board*, p. 849.

24 ECUADOR—VENEZUELA. Arbitration treaty signed in Quito. *P. A. U.*, Sept., 1921, p. 301.

24 PERU—UNITED STATES. Protocol for arbitration of Landreau claim signed. *U. S. Treaty Series*, No. 653.

25 FRANCE—GREAT BRITAIN. French Government addressed note to British Government relating to property of French subjects in Russia. Summary: *Times*, June 9, 1921, p. 9.

25 FRANCE—ITALY. Decree issued in France putting into force treaty of immigration, etc., signed at Rome, September 30, 1919. Text of treaty: *J. O.*, May 29, 1921, p. 6294.

26 CHINA—UNITED STATES. Treaty of October 20, 1920, confirming application of a 5 per cent ad valorem rate of duty on importation of American goods into China by citizens of the United States, ratified by U. S. Senate. Text: *Cong. Rec.*, May 26, 1921, p. 1791.

26 ITALY—SPAIN. Spain gave notice that commercial treaty of March 30, 1914, would terminate on June 26. *Ga. de Madrid*, June 1, 1921, p. 886.

27 AUSTRIAN REPARATIONS. Japan and Czecho-Slovakia informed Finance Committee of League that they would waive their reparations claims against Austria for 20 years, France and Great Britain having already taken same action. *Wash. Post,* May 28, 1921, p. 5.

27 GERMAN—SERB-CROAT-SLOVENE MIXED ARBITRAL TRIBUNAL. Regulations published in Germany. Text: *Reichs G.,* May 27, 1921, p. 692.

27 JAPAN. Announced that a revised customs tariff law and import tariff schedule would go into effect on June 1. *Wash. Post,* May 28, 1921, p. 1.

27 NETHERLANDS—UNITED STATES. New note on oil question sent to Holland on May 27. *N. Y. Times,* June 12, 1921, p. 16. Reply made public on June 23. *Wash. Post,* June 24, 1921, p. 5. Djambi oil measure excluding American interests from exploitation in Djambi fields became a law in Holland on July 1. *Cur. Hist.,* Aug., 1921, *14:* 834.

28 INSTITUTE OF INTERNATIONAL LAW. Extraordinary session held in Paris for election of new members. *Figaro,* Feb. 6, 1921, p. 2.

28 LEAGUE OF NATIONS. Financial Committee issued report. *N. Y. Times,* May 29, 1921, p. 2.

28 VESNITCH, MILENKO RADOMIR. Jugoslav minister to France died at Paris. *N. Y. Times,* May 29, 1921, p. 23; *Figaro,* May 29, 1921, p. 2.

29 SOCIETY OF COMPARATIVE LEGISLATION (Paris). Celebrated its 50th anniversary. *Figaro,* May 30, 1921, p. 4.

30 CANADA—UNITED STATES. Tariff corresponding to United States emergency measure put into effect in Canada. *N. Y. Times,* May 31, 1921, p. 17.

30 SALZBURG PLEBISCITE. Result of vote gave 85,000 votes in a total of 102,000 in favor of union with Germany. *Figaro,* May 31, 1921, p. 3.

June, 1921.

1 CHINESE CONSORTIUM. Text of notes and memoranda relating to the consortium and text of agreement of October 15, 1920, made public. *Nation* (*N. Y.*), June 1 and 8, 1921.

1 SOVIET RUSSIA. Note of protest sent by Soviet Government to the governments of Great Britain, France and Italy against recent seizure of Vladivostok by Japanese troops. Text: *Soviet Russia,* Aug., 1921, p. 72. *Times,* June 10, 1921, p. 9.

1 TACNA—ARICA PLEBISCITE. Recommended in message of President Alessandri to Chilean Congress. *N. Y. Times,* June 2, 1921, p. 12.

2 AUSTRIAN—BELGIAN ARBITRAL TRIBUNAL. Regulations published. Text: *Monit.,* June 2, 1921, p. 4549.

3 GERMAN REPARATIONS. Declarations of Governments of Belgium, France, Great Britain, Italy, and Japan, concerning modifications made in Annex II to Part VIII of Treaty of Versailles, made public in Germany. Text: *Reichs G.,* June 3, 1921, No. 58.

5 FIUME AGREEMENT. Commercial agreement signed by Italy, Jugoslavia and Fiume, under which port of Fiume is to be controlled by a consortium on which each state will appoint two members. *N. Y. Times,* June 7, 1921, p. 2.

5(?) GREAT BRITAIN—LIBERIA. Convention ratified regulating relations between tribes living on border line between Liberia and Sierra Leone. *G. B. Treaty series,* 1921, No. 7.

5 INTERNATIONAL LABOR OFFICE. Report of investigation by League of Nations Committee made public. *N. Y. Times,* June 6, 1921, p. 15.

7 CZECHOSLOVAK REPUBLIC—POLAND. International boundary commission fixed frontiers in region of Teschen and Oyava. *Temps,* June 8, 1921, p. 1.

7 LEAGUE OF NATIONS. Committee on amendments completed its sessions in London, after recommending three amendments to Covenant, and several important changes. *L. N. M. S.,* July 1, 1921, p. 30.

7 MEXICO—UNITED STATES. Secretary Hughes issued statement of proposal for establishing relations. Summary: *Cur. Hist.,* July 1921, *14:* 711.

7 RUMANIA—SERB, CROAT, SLOVENE STATE. Defensive convention signed at Belgrade. Text: *Cur. Hist.,* Sept., 1921, *14:* 947.

8 ANGLO-GERMAN MIXED ARBITRAL TRIBUNAL. Held first session. *Times,* June 8, 1921, p. 14.

8 CZECHO-SLOVAK REPUBLIC—RUMANIA. Boundary agreement concluded by exchange of communes. *Temps,* June 9, 1921, p. 2.

8 FRANCE—SPAIN. Spain notified France of intention to terminate on September 10, 1921, the *modus vivendi* of December 30, 1893, which regulated commercial relations between the two countries. *Ga. de Madrid,* June 17, 1921, p. 1044.

8 RUMANIA—SERB, CROAT, SLOVENE STATE. Agreement guaranteeing maintenance of status created by treaties of Neuilly and Trianon, signed at Belgrade. *Times,* June 10, 1921, p. 9. *Cur. Hist.,* July, 1921, *14:* 698.

9 DRAGO, LUIS MARIA. Noted jurist and author of the Drago doctrine died at Buenos Aires, at age of 62 years. *N. Y. Times,* June 10, 1921, p. 13.

9 GREAT BRITAIN—SOVIET RUSSIA. Curzon replied to recent note of Tchitcherin in which protest was made to British and French Governments against Japanese at Vladivostok. Curzon declared the communication not acceptable and declined to enter into correspondence. *N. Y. Times,* June 10, 1921, p. 15.

10 CAUCASUS CONFEDERATION. Agreement for union of Armenia, Azerbaidjan and Georgia and the North Caucasus Republic of Daghestan signed in Paris. *Cur. Hist.,* Aug., 1921, *14:* 878.

13 INTERNATIONAL LABOR OFFICE. Adopted Spanish as third official language. *Temps,* June 14, 1921, p. 1.

14 DOMINICAN REPUBLIC. Proclamation issued on June 14 by Military Governor stating conditions on which military forces would be withdrawn and self-government restored. Text: On June 25, the State Department issued order modifying and clarifying the previous order. *Cur. Hist.,* Aug., 1921, *14:* 813.

14 ELBE SHIPPING AWARD. Announced by arbitrator. *N. Y. Times,* Aug. 3, 1921, p. 15.

15 AUSTRIAN—FRENCH ARBITRAL TRIBUNAL. Regulations published. Text: *J. O.,* June 15, 1921, p. 6818.

17 CENTRAL AMERICAN UNION. Provisional Federal Council began functioning at Tegucigalpa. *Cur. Hist.,* Aug., 1921, *14:* 897.

17-28 LEAGUE OF NATIONS COUNCIL. Held 13th session in Geneva, for consideration of Aland Islands dispute, Polish-Lithuanian question, Albania, relief of Austria, mandates, etc. *L. N. M. S.,* July 1, 1921, p. 27.

17 PARAGUAY—URUGUAY. Arbitration convention ratified by Uruguay. *D. O. (Uruguay),* June 21, 1921, No. 4586.

17 SWITZERLAND. New customs tariff announced to take effect July 1. *N. Y. Times,* June 18, 1921, p. 4.

19 GREECE. Allied powers sent offer to Greece to attempt mediation between the Greeks and Turkish Nationalists, but offer was refused on June 25. *Naval Inst. Proc.,* Aug., 1921, p. 1318. *Cur. Hist.,* Sept., 1921, *14:* 1066.

19/20 SPAIN—SWEDEN. Provisional commercial agreement concluded. Summary: *Ga. de Madrid,* June 22, 1921, p. 1108.

20 *to Aug.* 5. BRITISH IMPERIAL CONFERENCE. Leading British and Colonial statesmen held conference in London on Empire problems. *Cur. Hist.,* Aug., 1921, *14:* 849. *Spectator,* Aug. 13, 1921, p. 192.

21 INTERNATIONAL WIRELESS CONFERENCE. Opened in Paris with representatives from England, France, United States, Italy and Japan. *N. Y. Times,* June 22, 1921, p. 2.

21 LEAGUE OF NATIONS. Military, naval and air committee held fifth session in Geneva to consider limitation of armament and other questions. *L. N. M. S.,* July, 1921, p. 35.

22 AUSTRIA—FRANCE. Convention of August 3, 1920, concerning Austrian debts prolonged until August 31, 1921. *J. O.,* June 22, 1921, p. 7158.

22(?) CENTRAL AMERICAN UNION. Congress of Costa Rica rejected by vote of 20—19 a majority report favoring pact. *Press notice,* June 23, 1921.

22 IRELAND. King George opened Ulster Parliament in Belfast. *Cur. Hist.,* Aug., 1921, *14:* 851.

23 GERMANY—UNITED STATES. Berlin announced that all American property held by Germany would be released immediately. *Wash. Post*, June 25, 1921, p. 5.

23 HUNGARIAN PEACE TREATY, Trianon, June 4, 1920. Ratified by Japan. *Temps*, June 25, 1921, p. 1.

23 HUNGARY. Applied for admission to League of Nations. *Temps*, June 24, 1921, p. 1.

24 ALAND ISLANDS. Awarded to Finland by League of Nations Council. Summary of decision: *L. N. M. S.*, July, 1921, p. 40.

24 COSTA RICA—UNITED STATES. Announced at San Jose that a protocol preliminary to a treaty by which Costa Rica will cede to United States rights along San Juan River had been signed by Costa Rica. *Cur. Hist.*, Aug., 1921, *14:* 897.

25 INTERPARLIAMENTARY UNION. Headquarters moved to Geneva. *Adv. of peace*, Aug., 1921, p. 317.

26 FAR EASTERN REPUBLIC—JAPAN. Preliminary economic agreement drawn up by Japanese consul and Vice Foreign Minister of the Chita Government. *Wash. Post*, June 27, 1921, p. 1.

28(?) CZECHO-SLOVAK REPUBLIC—GERMANY. Treaty of commerce signed, *Temps*, June 29, 1921, p. 2.

29 BELGIUM—FRANCE. Agreement relative to regulations for liquidation of enemy property made public. *Monit.*, June 29, 1921, p. 5364.

29 SERB, CROAT, SLOVENE STATE. Constitution voted by Constituent Assembly, 223 to 35. *Wash. Post*, June 30, 1921, p. 6. *Cur. Hist.*, Aug., 1921, *14:* 866. Text in part: *Europe*, July 30, 1921, p. 987.

30 *to July* 5. INTERNATIONAL CONFERENCE ON TRAFFIC IN WOMEN AND CHILDREN. Met in Geneva with 34 states represented. *L. N. M. S.*, Aug. 1, 1921, p. 70.

July, 1921.

1 AUSTRIA—UNITED STATES. Council of Ambassadors addressed note to United States asking postponement of claims against Austria for 20 years. *Naval Inst. Proc.*, Aug., 1921, p. 1317.

1 CHINA—GERMANY. Ratifications exchanged of commercial agreement signed at Peking on May 20. Text of various treaty documents: *Cur. Hist.*, Sept., 1921, *14:* 1041.

1 CHINA—UNITED STATES. State Department replied to China's note of June 9 regarding support of rights of Federal Telegraph Company to erect wireless stations in China. *Press notice*, July 8, 1921.

1 INTERNATIONAL CHAMBER OF COMMERCE. Second congress closed in London. *Times*, July 2, 1921, p. 13.

1 MEXICAN OIL DECREES. President Obregon's recent decrees became effective which repealed the law of 1917 and put in force increased export duties on petroleum. *Naval Inst. Proc.*, Aug., 1921, p. 1313.

1 Peace Resolution. Senate Joint Resolution 16 terminating state of war between Germany and the United States and between Austria-Hungary and the United States passed Senate by vote of 38 to 19. Signed by President on July 2. Text: *Cong. Rec.*, July 1, 1921, p. 3454. *Public res.* No. 8.

1 Poland—Rumania. Military convention signed March, 1921, ratified by Polish diet. *Temps*, July 3, 1921, p. 2.

2(?) Afghanistan—Persia. Treaty signed establishing diplomatic and consular representation in both countries. *Temps*, July 2, 1921, p. 2.

2 Czecho-Slovak Republic—Rumania. Military convention signed. *Temps*, July 6, 1921, p. 2. Summary: *Cur. Hist.*, Aug., 1921, *14:* 870.

3 Central American Union. Note from Nicaragua made public urging removal of obstacles to Nicaragua's membership in Union. *Cur. Hist.*, Aug., 1921, *14:* 896.

4 Brazil—United States. International arbitration agreement signed by North American Chamber of Commerce and the Brazilian Federation of Commerce. *Wash. Post*, July 6, 1921, p. 5.

6 Germany—United States. Proclamation issued in Germany concerning industrial property rights of nationals of the United States. *Deutsch. R.*, July 15, 1921, No. 163.

7 Anglo-Japanese Treaty. Notification by British and Japanese Governments relative to continuation of agreement after July, 1921, sent to League of Nations. *L. N. M. S.*, Aug., 1921, p. 64.

8 German War Criminals. France withdrew its mission to the Leipzig Court, and notified Allied Governments of its action. *N. Y. Times*, July 9, 1921, p. 1.

9 *to Aug.* 26. Ireland—Great Britain. Truce declared July 9. British proposals handed to Eamon de Valera on July 21. *Cur. Hist.*, Sept., 1921, *14:* 952. Proposal rejected by De Valera on August 10. Text of British proposals of July 26, De Valera's letter of August 10, and Lloyd George's reply of August 13: *N. Y. Times*, Aug. 15, 1921, p. 1. *Round Table*, Sept., 1921, p. 759. De Valera again rejected British terms on August 24. On August 26, Lloyd George sent reply reiterating government's former standpoint that Ireland could not be permitted to withdraw from the empire. Texts of both letters: *N. Y. Times*, Aug. 27, 1921, p. 1.

10 Conference on Limitation of Armament. President Harding sent preliminary invitations to Great Britain, France, Italy, and Japan to participate in a conference, preferably in Washington. Acceptance received from France, Great Britain and Italy on July 12, and conditional acceptance from Japan on July 14. On August 11, formal invitations were sent out, including one to China. Texts: On July 27, Japan consented to sit in the conference. By the first week in

August all the nations invited had accepted November 11 as the date for opening of conference. *Cur. Hist.*, Sept., 1921, *14:* 917.

10(?) GREECE—TURKEY. New campaign begun by King Constantine against Turkish Nationalist forces under Mustapha Kemal Pasha for control of Asia Minor. *Cur. Hist.*, Aug., 1921, *14:* 754.

11 FAR EASTERN REPUBLIC—UNITED STATES. Note delivered to American minister at Peking urging United States to call upon Japan to withdraw military forces from Siberia. Similar notes sent to China and Great Britain. *N. Y. Times*, July 12, 1921, p. 14.

12 ESTHONIA—LATVIA. Political and military agreement signed. *Weekly Review*, July 23, 1921, p. 69.

12 FRANCE—GERMANY. France informed Germany that she will continue occupation of Rhine region until war criminals are punished. *N. Y. Times*, July 13, 1921, p. 3.

13 MEXICO. President Obregon invited all countries whose nationals have suffered from Mexican revolutionists to appoint delegates to meet an indemnity board. *Wash. Post*, July 14, 1921, p. 3.

14 DENMARK—GREAT BRITAIN. Agreement signed relating to the suppression of the capitulations in Egypt. *G. B. Treaty series*, 1921, No. 15.

15 LEAGUE OF NATIONS. Blockade committee. Organization and list of members announced. *Wash. Post*, July 17, 1921, II, 14.

16 DENMARK—GERMANY. Negotiations for transfer of North Slesvig to Denmark resulted in agreement on essential points. Negotiations adjourned till September. *Temps*, July 15/16, 1921, p. 2.

16 GREAT BRITAIN—NORWAY. Temporary agreement signed at Christiania for establishment of air service between the two countries. *Times*, July 18, 1921, p. 9.

16 HUNGARY. Promulgated decree relative to payment of debts, contracted before the war, to subjects of neutral countries. Text of decree: *Ga. de Madrid*, Aug. 10, 1921, p. 674.

16(?) POLAND—RUMANIA. Commercial treaty concluded. *Temps*, July 17, 1921, p. 2.

16 WIRELESS TELEGRAPH TECHNICAL COMMITTEE. Met at Paris with representatives from United States, Great Britain, Italy, Japan, and France. *Temps*, July 17, 1921, p. 6.

18-21 INTERNATIONAL CHILD WELFARE CONGRESS. Held in Brussels. Voted to establish an international office for protection of childhood. *Times*, July 20, 1921, p. 12.

19 DENMARK—SPAIN. Commercial treaty of July 4, 1893, prolonged for two months. *Ga. de Madrid*, Aug. 1, 1921, p. 529.

20 CENTRAL AMERICAN UNION. Constituent Assembly met in Tegucigalpa to perfect a federal constitution and arrange for its signing on September 15. *Cur. Hist.*, Sept., 1921, *14:* 1078.

20 FINLAND—FRANCE. Commercial convention signed at Paris July 13, 1921, promulgated in France. Text of treaty and protocol of signature. *J. O.*, July 21, 1921, p. 8438.

20 SPAIN—UNITED STATES. Parcels post convention signed February 4/March 1, 1921, promulgated in Spain. *Ga. de Madrid*, July 20, 1921, p. 358.

21 MEXICO. Announced that Spain and Japan had recognized Obregon government. *Cur. Hist.*, Sept., 1921, *14:* 1076.

22 CZECHO-SLOVAK TREATY, Saint Germain, September 10, 1919. Ratified by France. *J. O.*, July 24, 1921, p. 8546.

22 HUNGARIAN PEACE TREATY, Trianon, June 4, 1920. Ratified by France. *J. O.*, July 24, 1921, p. 8546.

22 RUMANIAN TREATY, Paris, December 9, 1919. Ratified by France. *J. O.* July 24, 1921, p. 8546.

22 SERB, CROAT, SLOVENE TREATY, St. Germain, September 10, 1919. Ratified by France. *J. O.*, July 24, 1921, p. 8546.

23 HELIGOLAND (Germany). People of island sent petition to League of Nations asking for neutralization of island under protection of League or reannexation to Great Britain. *N. Y. Times*, July 24, 1921, II, 1.

24 DANUBE RIVER. Internationalization convention signed. *Evening Star*, July 25, 1921, p. 4.

25-28. LEAGUE OF NATIONS. Consultative committee on communications and transit held first meeting in Geneva. *L. N. M. S.*, Aug. 1, 1921, p. 62.

26 HUNGARIAN PEACE TREATY, Trianon, June 4, 1920. Ratifications exchanged at Paris. *N. Y. Times*, July 27, 1921, p. 5. *Europe*, July 30, 1921, p. 973.

27-29. BALTIC CONFERENCE. Held at Helsingfors with representatives from Latvia, Esthonia, Finland, and Poland. No definite political results. *N. Y. Times*, July 28, 1921, p. 15; *Times*, July 30, 1921, p. 10.

27 NORWAY—UNITED STATES. United States ratified an agreement signed June 30, 1921, for arbitration of claims of Norwegian subjects arising out of requisitions by U. S. Shipping Board. *U. S. Treaty Ser.*, 654.

28 HUNGARY—SOVIET RUSSIA. Agreement for repatriation of Hungarian prisoners in Russia signed at Riga. *Evening Star*, Aug. 1, 1921, p. 8.

28 *to Aug.* 26. INSTITUTE OF POLITICS. Held at Williamstown, Mass., under auspices of Williams College. *Wash. Post*, Aug. 27, 1921, p. 3.

28-30 INTERNATIONAL CONFERENCE ON MARITIME LAW. Held twelfth meeting in Antwerp. *Times*, Aug. 2, 1921, p. 7.

28 WAR TREATY. Treaty providing for a declaration of war on Hungary in the event of return of Emperor Charles to Hungarian throne signed by Rumania, Jugoslavia and Czecho-Slovakia. *Evening Star*, July 28, 1921, p. 1.

29 AERIAL NAVIGATION CONFERENCE. Anglo-French-Belgian conference closed its sessions at Brussels. *Temps,* July 29, 1921, p. 2.

31 GREAT BRITAIN—PERU. Switzerland consented to act as arbitrator in dispute concerning boundaries of certain petroleum wells in Peru belonging to an English company. *Wash. Post,* Aug. 1, 1921, p. 6.

August, 1921.

1 AUSTRIA—RUMANIA. Commercial treaty expired. Negotiations for a new one will begin on August 15. *Temps,* Aug. 14, 1921, p. 1.

1-13 INTERNATIONAL EMIGRATION COMMISSION. Met in Geneva to deal with suppression of abuses connected with emigration, etc. *N. Y. Times,* Aug. 3, 1921, p. 3. *Times,* Aug. 16, 1921, p. 7.

2 DANUBE SHIPPING AWARD. Walker D. Hines announced his decision as arbitrator. *N. Y. Times,* Aug. 3, 1921, p. 15.

2 FRANCE—GERMANY. Decree issued in France putting into force the convention signed June 30, 1920, relative to treasury of Alsace-Lorraine, ratified by both countries on July 23, 1921. *J. O.,* Aug. 4, 1921, p. 9111.

2 LITHUANIA—POLAND. Lithuanian delegate to the League refused to accept Council's solution of the dispute over Vilna territory. *Times,* Aug. 3, 1921, p. 7.

3 GERMAN INDEMNITY. Reparations Commission gave out information regarding division among the Allies of German payments. *Times,* Aug. 4, 1921, p. 7.

5 NORWAY—SOVIET RUSSIA. Terms of commercial agreement drawn up at Christiania agreed to by Norway. *Temps,* Aug. 6, 1921, p. 1.

6 FRANCE. Decree issued fixing composition of French delegations to international and European commissions on the Danube. *J. O.,* Aug. 17, 1921, p. 9646.

7 FRANCE—SWITZERLAND. Convention on customs zones signed at Paris. Text of preamble: *Temps,* Aug. 15, 1921, p. 2.

9 BOLIVIA—GREAT BRITAIN. Great Britain denounced treaty for the abolition of slave trade, signed at Sucre, Sept. 25, 1840. *London Ga.,* Sept. 27, 1921, p. 1.

9-10 ALLIED FINANCE CONFERENCE. Met in Paris, *Times,* Aug. 11, 1921, p. 9.

10 FRANCE—ITALY—MONACO. Decree issued in France approving and publishing text of agreement signed at Paris, December 7, 1918, between France and Italy on circulation of nationals in frontier zones and arrangement signed at Paris July 18, 1921, between France, Italy and Monaco on same subject. *J. O.,* Aug. 13, 1921, p. 9518.

10 GREAT BRITAIN. Order in Council issued putting into force certain sections of Hungarian peace treaty. Text of sections: *London Ga.,* Aug. 12, 1921, p. 6372.

10 GREAT BRITAIN. Order in Council issued declaring August 31 to be the date of termination of present war. *London Ga.*, Aug. 12, 1921, p. 6389.

10 GREAT BRITAIN. Egypt (Treaty of Peace, Hungary) Order in Council issued, relating to property of nationals of Hungary. *London Ga.*, Aug. 19, 1921, p. 6573.

10 TURKISH PEACE TREATY, Sèvres, August 10, 1920. Supreme Council declared that Greece and Turkish Nationalists were engaged in a private war, and proclaimed neutrality of England, France, Italy, and Japan. *Cur. Hist.*, Sept., 1921, *14:* 1065.

14 CZECHO-SLOVAK REPUBLIC—SERB, CROAT, SLOVENE STATE. Military convention signed at Prague. *Temps*, Aug. 15, 1921, p. 2.

14 INTER-ALLIED FINANCIAL CONFERENCE. Concluded its sittings in Paris after signing agreement concerning division of German payments. *Times*, Aug. 15, 1921, p. 7.

15 INTERNATIONAL CONFERENCE ON RUSSIAN RELIEF. Opened at Geneva. *N. Y. Times*, Aug. 16, 1921, p. 2. *Temps*, Aug. 17, 1921, p. 4.

16 ALBANIA. Appealed to the League to keep the peace between Albania and Serbia. *Wash. Post*, Aug. 17, 1921, p. 2.

16(?) FRANCE—GERMANY. France sent note to Germany concerning suppression of economic sanctions, to begin September 15, if Germany agrees to terms. Summary: *Temps*, Aug. 18, 1921, p. 1.

16 INTERNATIONAL DANUBE COMMISSION. First session opened at Breslau, with representatives from France, England, Czecho-Slovakia, Austria, Hungary, Rumania, Bulgaria, Württemburg and Bavaria. *Temps*, Aug. 17, 1921, p. 4.

16 PETER I OF SERBIA. Died at Belgrade. *N. Y. Times*, Aug. 17, 1921, p. 11.

17 BARANYA. Council of ambassadors decided not to permit Baranya to form a republic. *N. Y. Times*, Aug. 18, 1921, p. 17.

17-20 INTERPARLIAMENTARY UNION. Nineteenth meeting held in Stockholm. *N. Y. Times*, Aug. 21, 1921, p. 3.

17 SERB, CROAT, SLOVENE STATE. Alexander proclaimed his accession to throne. *N. Y. Times*, Aug. 23, 1921, p. 3.

18(?) BRAZIL—UNITED STATES. Money order convention ratified by Brazil. *Evening Star*, Aug. 19, 1921, p. 1.

18 COSTA RICA—PANAMA. On June 27, Panama appealed to Secretary Hughes against White award in boundary dispute. Reply of June 30 said award must be accepted. *Cur. Hist.*, Aug., 1921, *14:* 898. Further efforts toward settlement resulted in final statement from Secretary Hughes on August 18 that Costa Rica need delay no longer in taking jurisdiction over disputed territory. *Wash. Post*, Aug. 22, 1921, p. 1. On August 23, Panama conceded Coto to Costa Rica. *Wash. Post*, Aug. 25, 1921, p. 3. On August 24, President Porras

issued protest against action of United States Government. *Wash. Post,* Aug. 25, 1921, p. 3.

18 ESTHONIA. Renewed its demand for admission to League of Nations. *Temps,* Aug. 19, 1921, p. 1.

18 HUNGARIAN PEACE TREATY, Trianon, June 4, 1920. Promulgated by France. Text: *J. O.,* Aug. 26, 1921, p. 9887.

20 SOVIET RUSSIA—UNITED STATES. Agreement providing for American relief for the famine districts of Russia signed at Riga. *Wash. Post,* Aug. 21, 1921, p. 4.

22 BARANYA. Hungarian troops began occupation of district awarded to Hungary. *N. Y. Times,* Aug. 23, 1921, p. 4.

23 COLOMBIA—UNITED STATES. Treaty for settlement of differences growing out of independence of Panama presented to Colombian Senate for ratification. *Wash. Post,* Aug. 24, 1921, p. 3.

23 EMIR FEISAL. Ascended throne of the Irak (Mesopotamia) as King. *N. Y. Times,* Aug. 24, 1921, p. 15. *Times,* Aug. 24, 1921, p. 7.

24 AUSTRIA—UNITED STATES. Treaty of peace signed at Vienna. *Wash. Post,* Aug. 25, 1921, p. 5.

24 CHINA—GREAT BRITAIN. Text published of Cassel Collieries Contract of April 1, 1920, between Great Britain and the defunct Kwantung Government in China. *Nation, (N. Y.)* Aug. 24, 1921, p. 212.

25 GERMANY—UNITED STATES. Peace treaty signed in Berlin. Text: *Wash. Post,* Aug. 26, 1921, p. 1.

26 ERZBERGER, MATTHIAS. Former Premier and Finance Minister of Germany, assassinated. *N. Y. Times,* Aug. 27, 1921, p. 1.

27 FRANCE—GERMANY. Treaty regulating payment of reparations signed at Wiesbaden. *N. Y. Times,* Aug. 28, 1921, p. 2.

27 RUSSIAN FAMINE RELIEF. Agreement signed at Moscow by Dr. Nansen and M. Tchitcherin. Text: *Europe,* Sept. 17, 1921, p. 1216.

28 GERMANY—ITALY. Commercial treaty signed at Berlin which will come into force on September 1. *Wash. Post,* Sept. 1, 1921, p. 5; *Times,* Aug. 31, 1921, p. 9.

29(?) ALBANIA. Agreement on boundaries, reaffirming frontiers of 1913, reached by Great Britain, France and Italy. *Wash. Post,* Aug. 30, 1921, p. 6.

29 HUNGARY—UNITED STATES. Peace treaty signed at Budapest. *Wash. Post,* Aug. 31, 1921, p. 1.

29 LEAGUE OF NATIONS COUNCIL. Met at Geneva to consider Silesian question. *N. Y. Times,* Aug. 30, 1921, p. 3.

30 AUSTRIA-HUNGARY. Occupation of West Hungary (Burgenland) by Austrian troops began. *N. Y. Times,* Aug. 31, 1921, p. 3.

30 INTERNATIONAL LAW ASSOCIATION. Thirtieth session opened at The Hague. *N. Y. Times,* Aug. 31, 1921, p. 3.

30 MEXICAN OIL RULING. Mexican Supreme Court handed down decision debarring Mexican authorities from denouncing oil rights held by Texas Oil Company prior to May 1, 1917. *Naval Inst. Proc.*, Oct., 1921, p. 1673.

INTERNATIONAL CONVENTIONS

AERIAL NAVIGATION. Protocol, Paris, May 1, 1920.
Ratification:
France. July 15, 1921. *J. O.*, July 31, 1921, p. 8982.

COPYRIGHT UNION. Revision, Berlin, Nov. 13, 1908. Protocol, March 20, 1914.
Adhesion:
Brazil. July 18, 1921.
Czechoslovak Republic. Feb. 22, 1921. *E. G.*, Aug. 31, 1921, No. 37.

EMPLOYMENT OF CHILDREN AT SEA. Genoa, July 9, 1920.
Ratification:
Great Britain, July 5, 1921. *London Ga.*, July 8, 1921, p. 5479.

EMPLOYMENT OF CHILDREN IN INDUSTRIES. Washington, November 28, 1919.
Ratification:
Great Britain, July 5, 1921. *Lond. Ga.*, July 8, 1921, p. 5478.

GENEVA CONVENTION. August 22, 1864. Revisions.
Adhesion:
Esthonia. March 10, 1921. *J. O.*, May 26, 1921, p. 6114; *E. G.*, April 27, 1921, p. 323.
Ratification:
Czecho-Slovak Republic, December 1, 1920.
Finland. February 27, 1921. *Ga. de Madrid*, June 7, 1920, p. 949.
Greece. May 27, 1921. *Bundesbl.*, June 8, 1921, p. 445.

MERCHANDISE TRANSPORT BY RAILWAY. Berne, Oct. 14, 1890.
Adhesion:
Austria. July 25, 1921. *E. G.*, Aug. 31, 1921, No. 37.

MOTOR VEHICLES, INTERNATIONAL CIRCULATION OF. Paris, October 11, 1909.
Adhesion:
Czecho-Slovak Republic. February 28, 1921. *J. O.*, April 15, 1921, p. 4762.

NIGHT WORK OF WOMEN. Berne, Sept. 26, 1906.
Adhesion:
Austria. July 25, 1921. E. G., Aug. 31, 1921, No. 37.

NIGHT WORK OF WOMEN. Washington, November 28, 1919.
Ratification:
Great Britain. July 5, 1921. *Lond. Ga.*, July 8, 1921, p. 5478.

NIGHT WORK OF YOUNG PERSONS. Washington, November 28, 1919.
Ratification:
Great Britain, July 5, 1921. *Lond. Ga.*, July 8, 1921, p. 5478.

PROTECTION OF INDUSTRIAL PROPERTY. Paris, March 20, 1883. Revision. Brussels. December 14, 1900; Washington, June 2, 1911.

Adhesion:

Bulgaria. April 30, 1921. *Bundesbl.*, May 25, 1921, p. 231. *Monit.*, June 15, 1921, p. 4888.

Finland, August 2, 1921. *E. G.*, August 31, 1921, No. 37.

PROTECTION OF INDUSTRIAL PROPERTY [affected by the World War], Berne, June 30, 1920.

Adhesion:

Hungary. March 26, 1921. *Monit.*, May 6/7, 1921, p. 3804. *Reichs. G.*, May 3, 1921, p. 493.

Promulgation:

Netherlands, May 21, 1921. *Staats.*, 1921, No. 733.

SANITARY CONVENTION. Paris, January 17, 1912.

Adhesion:

Newfoundland. March 4, 1921. *J. O.*, May 21, 1921, p. 5954.

Promulgation:

Switzerland. April 27, 1921. *E. G.*, April 27, 1921, p. 245.

Ratification:

Colombia.

Rumania. May 26, 1921. *J. O.*, May 26, 1921, p. 6114.

SANITARY CONVENTION. Paris, December 3, 1903.

Denunciation:

United States. May 26, 1921. *Cong. Rec.*, May 26, 1921, p. 1798.

UNEMPLOYMENT CONVENTION. Washington, November 28, 1919.

Ratification:

Great Britain. July 5, 1921. *Lond. Ga.*, July 8, 1921, p. 5478.

UNIVERSAL POSTAL CONVENTION. Madrid, November 30, 1920.

Promulgation:

France (for all French colonies and French protectorates of Indo-China). May 4, 1921. *J. O.*, May 27, 1921, p. 6188.

Germany. March 22, 1921. *Reichs. G.*, March 24, 1921.

WHITE PHOSPHORUS IN MATCHES. Berne, September 26, 1906.

Adhesion:

Czecho-Slovak Republic. March 30, 1921. *J. O.*, May 31, 1921, p. 6346.

Rumania. July 21, 1921. *E. G.*, August 10, 1921, No. 34.

WHITE SLAVE TRADE. Paris, May 4, 1910.

Adhesion:

Bulgaria. June 15, 1921. *J. O.*, July 14, 1921, p. 8138.

Uruguay. June 30, 1921. *Ga. de Madrid*, August 4, 1921, p. 576.

M. ALICE MATTHEWS.

PUBLIC DOCUMENTS RELATING TO INTERNATIONAL LAW

GREAT BRITAIN[1]

Bolivia, Convention between the United Kingdom and, for the prevention of false indications of origin on goods. Signed at La Paz, April 5, 1920. (Treaty Series, 1921, No. 9.) 2d.

Bolshevism and Sinn Fein. Intercourse between. (Cmd. 1326.) 2d.

Brazil, Treaty between the United Kingdom and, providing for the establishment of a peace commission, signed at Rio de Janeiro, April 4, 1919. (Cmd. 1278.) 2d.

British Nationality and Status of Aliens. Regulations (India), March 17, 1921. (S. R. & O. 1921, No. 528.) 1½d.

Capitulations in Egypt, Suppression of the. Agreement between Great Britain and Greece. Athens, Aug. 22–Sept. 4, 1920. (Treaty Series, 1921, No. 5.) 1½d.

———. Agreement between Great Britain and Norway. April 22, 1921. (Treaty Series, 1921, No. 10.) 2d.

Copyright, international. Order in Council, May 27, 1921, amending the Order in Council of June 24, 1912, regulating copyright relations with the foreign countries of the Berne Copyright Union as regards Czecho-Slovakia. (S. R. & O. 1921, No. 956.) 2d.

East Africa. Convention between Great Britain and Belgium with a view to facilitating Belgian traffic through the Territories of East Africa, signed at London, March 15, 1921. (Treaty Series, 1921, No. 11.) 2d.

Ecuador, Trade and commerce of. Feb., 1921. *Dept. Overseas Trade.* 10d.

Egypt, Report on the economic and financial situation of. March, 1921. *Dept. Overseas Trade.* 1s. 1½d.

Finland, Report on the economic, financial and industrial conditions of, for 1920. *Dept. Overseas Trade.* 1s. 1½d.

Foreign Jurisdiction. The China (Amendment No. 2) Order in Council, Nov. 9, 1920. (S. R. & O. 1921, No. 866.) 2d.

———. The China (Amendment) Order in Council, Dec. 21, 1920, No. 3, 1920. (S. R. & O. 1921, No. 787.) 2d.

German Reparation (Recovery) Act, 1921. (II Geo. V, Ch. 5.)

———. Treasury Minute, March 24, 1921, relative to. (Cmd. 1251.) 1½d.

[1] Parliamentary and official publications of Great Britain may be obtained for the amount noted from the Superintendent of Publications, H.M. Stationery Office, Imperial House, Kingsway, London, W.C. 2.

German Reparation (Recovery) Act, 1921. Procedure. Supreme Court, England. Rules, April 4, 1921. (S. R. & O. 1921, No. 449.) 1½d.

———. Treasury Minute, May 17, 1921, relative to. (Cmd. 1329.) 2d.

Greece. Report on the industrial and economic situation. Feb., 1921. *Dept. Overseas Trade.* 1s. 10½d.

Hungary, Report on the commercial and industrial situation of. April, 1921. *Dept. Overseas Trade.* 1s. 4½d.

Liberia, Convention between the United Kingdom and, supplementary to the convention of Jan. 21, 1911. Signed at London, June 25, 1917. (Treaty Series, 1921, No. 7.) 2d.

Mandates. Draft for East Africa (British) as submitted for approval of League of Nations. (Misc. 1921, No. 14.) 2d.

———. Draft for Togoland (British) and the Cameroons (British) as submitted for approval of League of Nations. (Cmd. 1350.) 3d.

———. Economic Rights in Mandated Territories, Correspondence between His Majesty's Government and the United States Ambassador respecting. (Misc. 1921, No. 10.) 3d.

Mixed Arbitral Tribunals. Tribunaux Arbitraux Mixtes, institués par les Traités de Paix. Recueil des Décisions des. Nos. 1 and 2, April and May, 1921. *Foreign Office.* 3s. 6d.

Netherlands, General report on the economic, financial and industrial conditions of. Jan., 1921. *Dept. Overseas Trade.* 1s. 4½d.

Niger River. Convention between the United Kingdom and France supplementary to the Declaration of March 21, 1899, and the Convention of June 14, 1898, respecting Boundaries West and East of the Niger, signed at Paris, Sept. 8, 1919. (Treaty Series, 1921, No. 6.) (With Map.) 7d.

Papua, Oil in. Papers respecting an arrangement between His Majesty's Government and the Government of the Commonwealth of Australia relating to. (Cmd. 1286.) 2d.

Peace handbooks prepared under direction of Historical Section of Foreign Office:

Vol. XIII, Persian Gulf: French and Portuguese possessions in Asia. (Cloth) 10s. 11d.

Vol. XV, Partition of Africa: British Possessions (1). (Cloth) 13s.

Vol. XVI, British Possessions in Africa. (2) The Congo. 12s. 11½d.

Vol. XVIII, French African Possessions. (Cloth) 15s. 7d.

Vol. XIX, Portuguese Possessions in Africa. (Cloth) 13s.

Vol. XX, Spanish and Italian Possessions in Africa: Independent States. (Cloth) 15s. 6d.

Vol. XXI, North, Central and South America: Atlantic Island. (Cloth) 15s. 6½d.

Vol. XXII, Pacific Islands. (Cloth) 15s. 6½d.

Peace Treaty with Austria. Amendment Order No. 2, May 27, 1921. (S. R. & O., 1921, No. 973.) 2d.

Peace Treaty with Bulgaria. Amendment Order No. 2, May 27, 1921. (S. R. & O. 1921, No. 974.) 2d.

Peace Treaties. Germany. Amendment Order No. 2, May 27, 1921. (S. R. & O. 1921, No. 968.) 2d.

Permanent Court of International Justice, Protocol establishing the. (Misc. 1921, No. 13.) 3½d.

Poland. Report on the industrial, commercial and economic situation. March, 1921. *Dept. Overseas Trade.* 2s. 1½d.

Russia, Information on. Report (political and economic) of the committee to collect. (Russia, 1921, No. 1.) 2s. 4½d.

Siam, Report on the commercial situation in, at the close of 1920. *Dept. Overseas Trade.* 1s. 4½d.

Sweden, Report on the commercial and industrial situation of, at the close of 1920. *Dept. Overseas Trade.* 1s. 1½d.

Switzerland, General report on the economic situation in. April, 1921. *Dept. Overseas Trade.* 1s. 10½d.

Telegrams to and from the United States. Correspondence respecting alleged delay by British Authorities. (United States, No. 1, 1921.) 1½d.

Treaty with Austria, together with other treaties, agreements, etc., signed at Saint-Germain-en-Laye, Sept. 10, 1919; and declarations, treaties, and other documents, relevant thereto, signed at Paris, Dec. 5 and 8, 1919, and July 16, 1920, and at Sèvres, Aug. 10, 1920. *Foreign Office.* 1s. 9d.

Treaty of Peace (Hungary) Act. (II Geo. V, Ch. 11.) 2d.

Treaty of Peace (Hungary) Bill, 1921, Note on the. (Misc. 1921, No. 11.) 1½d.

Treaty of Rapallo, Nov. 12, 1920, between the Kingdom of Italy and the Kingdom of the Serbs, Croats and Slovenes. Recognition by His Britannic Majesty's Government of the. (Misc. 1921, No. 12.) 1½d.

Treaty of Versailles, June 28, 1919. Protocols and correspondence between the Supreme Council and the Conference of Ambassadors and the German Government and the German Peace Delegation between Jan. 10, 1920, and July 17, 1920, respecting the execution of the. (Misc. 1921, No. 15.) 2s. 5d.

———. Protocol modifying Annex 11 to Part VIII of, signed at London, May 5, 1921. (Treaty Series, 1921, No. 12.) 2d.

Turkey, Report on the trade and economic conditions of. Jan., 1921. *Dept. Overseas Trade.* 2s. 2d.

Wreck, Agreement between the British and Danish Governments respecting matters of. (Treaty Series, 1921, No. 4.) 1½d.

UNITED STATES[2]

Alien land laws and alien rights. Paper presented by Charles F. Curry on anti-alien land laws of States and Territories and of United States, of Japan, and other countries. 1921. 85 p. (H. doc. 89.) *House of Representatives.*

Anti-dumping act. Regulations for enforcement of, under provisions in emergency tariff act of May 27, 1921. 6 p. (Treasury decision 38742.) *Treasury Dept.*

Bolivar statue, Address of President Harding at unveiling of. Central Park, New York, N. Y., April 19, 1921. 9 p.

Cables, submarine. Act relating to landing and operation of submarine cables in United States. (S. 531.) Approved May 27, 1921. 1 p. (Public. 8). Paper, 5c.

———. Extracts from hearings on S. 4301 to prevent unauthorized landing of submarine cables in United States. Jan. 11, 1921. 360 p. *Interstate Commerce Committee.*

———. Hearings on S. 535, to prevent unauthorized landing of submarine cables in United States, May 10-13, 1921. 187 p. *Interstate and Foreign Commerce Committee.*

———. Unauthorized landing of, in United States. Report to accompany S. 535. May 16, 1921. 4 p. (H. rp. 71.) *Interstate and Foreign Commerce Committee.*

Canadian Boundary Delimitation Commission. Joint report upon survey and demarcation of boundary between United States and Canada. 1921. 104 p., il. Map. Cloth, $1.00.

Capitulations and consular institution, Origin of. By G. Bie Ravndal. 1921. 112 p. (S. doc. 34.) *Senate.*

China, Incorporation of companies to promote trade in. Report to accompany H. R. 4810. April 22, 1921. 7 p. (H. rp. 13.) *Judiciary Committee.*

Chinese in United States. Registry of certain Chinese refugees. Report to accompany S. J. Res. 33. July 6, 1921. 2 p. (S. rp. 200.) *Immigration Committee.*

Colorado River. Report to accompany S. 1853 to provide for commission between certain States on disposition of waters of Colorado River. June 27, 1921. 1 p. (S. rp. 180.) *Irrigation and Reclamation Committee.*

Crignier, Madame, Relief of. Report in relation to claim presented by Government of France on account of losses sustained by French citizen in connection with search for body of John Paul Jones. July 11, 1921. 13 p. (H. doc. 101.) *State Dept.*

[2] Where prices are given, the document in question may be obtained for the amount noted from the Superintendent of Documents, Government Printing Office, Washington, D.C.

Diplomatic Service. Information regarding appointments and promotions in diplomatic service of United States. 1921. 16 p. *State Dept.*

Disarmament. Extract from public. No. 30, 67th Cong., approved July 12, 1921. 1 p.

———. International conference to limit armaments. Report to accompany H. J. Res. 143. June 6, 1921. 1 p. (H. rp. 140.) *Foreign Affairs Committee.*

Foreign exchange. Emergency tariff and anti-dumping. Extracts from hearing on H. R. 2435, imposing temporary duties upon certain agricultural products to meet present emergencies and to provide revenues, etc. April 22, 1921. 45 p. *Finance Committee.*

———. Comptroller's point of view. Address of June 24, 1921. 14 p. (S. doc. 46.) *Senate.*

Fur seals and sea otters, Laws and regulations for protection of. 1921. 9 p. 4° (Circular 285). *Commerce Dept.*

Germany. Joint resolution terminating state of war between Imperial German Government and United States and between Imperial and Royal Austro-Hungarian Government and United States. (S. J. Res. 16.) Approved July 2, 1921. 2 p. (Public. 8.) Paper, 5c.

———. Report to accompany S. J. Res. 16 repealing declaration of war. April 25, 1921. 2 p. (S. rp. 2 [pt. 1].) *Foreign Relations Committee.*

———. Views of minority. April 29, 1921. 5 p. (S. rp. 2, pt. 2.) *Foreign Relations Committee.*

———. Report to accompany S. J. Res. 16, terminating state of war with Germany and Austria-Hungary. June 7, 1921. 4 p. (H. rp. 148, pt. 1.) *Foreign Affairs Committee.*

———. Minority views. June 8, 1921. 3 p. (H. rp. 148, pt. 2.) *Foreign Affairs Committee.*

———. Letter, in response to resolution, furnishing information as to number of United States troops in Europe, cost of keeping them, and amount of money now owed United States by Germany on their account. July 28, 1921. 1 p. (S. doc. 56.) *War Dept.*

———. List of post-offices of, belonging to other countries by terms of peace treaty. 1921. 12 p. 4°. *Post Office Dept.*

Haitian Customs Receivership. Report for fiscal period, Oct. 1, 1917–Sept. 30, 1918. 1921. 71 p. *Insular Affairs Bureau.*

———. Report for fiscal year Oct. 1, 1919—Sept. 30, 1920. 1921. 45 p. *Insular Affairs Bureau.*

Immigration. Act to limit immigration of aliens into United States. H. R. 4075. Approved May 19, 1921. 3 p. (Public. 5.) 5c.

———. Hearings on H. R. 4075. Digest of statements made before Senate Committee on Immigration, Jan. 3–26, 1921. 61 p. *Immigration and Naturalization Committee.*

Immigration. Hearings, May 5, 1921. Statement concerning certain nationalities in Army and Navy. 1921. 78 p. *Immigration and Naturalization Committee.*

———. Report to accompany H. R. 4075. April 19, 1921. 23 p. (H. rp. 4.) *Immigration and Naturalization Committee.*

———. Report to accompany H. R. 4075 for emergency legislation. April 30, 1921. 10 p. (S. rp. 17.) *Immigration Committee.*

———. Admission of aliens in excess of percentage quotas for June. Hearings, June 10, 1921. 49 p. (Serial 4.) *Immigration and Naturalization Committee.*

———. Report to accompany H. J. Res. 153, on admission of certain aliens in excess of quota for June, 1921. June 13, 1921. 16 p. (H. rp. 169.) *Immigration and Naturalization Committee.*

Immigration laws, rules of May 1, 1917. 5th edition, Dec., 1920. 116 p. Map. (This publication includes act of May 19, 1921, not included in previous issues.) Paper, 10c. *Immigration Bureau.*

Indemnity for damages caused by American forces abroad. Report to accompany S. 1018. April 30, 1921. 1 p. (S. rp. 10.) *Military Affairs Committee.*

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GEORGE A. FINCH.

JUDICIAL DECISIONS INVOLVING QUESTIONS OF INTERNATIONAL LAW

THE HILDING AND OTHER VESSELS (PART CARGOES EX).[1]

Judicial Committee of the Privy Council. Dec. 17, 1920.

International Law—Prize—Doctrine of "infection"—Declaration of Paris—Declaration of London—Orders in Council of 1914 and 1916.

By the law of Prize, transfers of the ownership of movables afloat from an enemy transferor to a neutral transferee, when unaccompanied by actual delivery of the goods, are not recognized. Goods which, though not condemnable in themselves, belong, when captured, to the same owner as other cargo in the same vessel liable to condemnation as contraband, are also condemnable as if they too were contraband.

These were four appeals from judgments of Presidents of the Prize Court—one delivered by Sir Samuel Evans and three by Lord Sterndale—relating to the doctrine of "infection."

Lord Sumner, in delivering their Lordships' judgment, said: These appeals are brought to test the validity of the doctrine of "infection" and its applicability to the conditions and forms of overseas commerce at the present time, and their Lordships think it right to deal with them accordingly, although, as will appear, they, or at any rate some of them, might have been disposed of on narrower grounds. They relate to four ships, *The Hilding, The Parana, The Rena,* and *The Kronprinsessan Margareta,* and to five voyages, there being two of the ship last named.

The claimants are neutrals, who acquired the titles on which they rely in the ordinary way of trade. The goods condemned were coffee and hog products, which are in themselves conditional contraband, and they were carried in neutral bottoms under the protection of neutral flags and were shipped from and deliverable at ports in neutral countries. None of them were shown to have had an ulterior enemy destination, nor was it shown that any of the claimants themselves were privy to the ulterior destination of any of the cargo carried in the same vessels, but in each case there was other cargo, which was in itself conditional contraband and was found to have an ulterior enemy destination, and it is by this that the goods in question have been held to be infected.

The case of *The Hilding* is mainly one of fact, and will be stated later. In the case of *The Parana,* neutral shippers, acting through agents, shipped

[1] 37 Times L. R. 199.

sundry parcels of coffee belonging to them, of which one had an ulterior enemy destination, as the President found and as the appellants now accept, and others were consigned to the appellants, Messrs. Lundgren and Rollven, in pursuance of contracts of sale and purchase made before the date of the bills of lading. The terms of the sale were c. and f. Stockholm, reimbursement by confirmed sight credit on a Swedish bank. The draft in respect of one shipment, that made at Santos, was met by the bank in Sweden before seizure; the draft drawn in respect of the other shipment, that made at Rio, was met after seizure. Both dates were long after the ship sailed from Santos and Rio respectively.

In the case of *The Rena,* Diebold and Co., a German firm trading in Brazil, had shipped sundry parcels of coffee, of which one, nominally consigned to Swedish consignees, but claimed on behalf of a Dutch firm, the Commanditaire Vennootschap Heybroek and Co., as purchasers, was held by the President to have belonged to Diebold and Co. at the time of the seizure and to have had an ulterior enemy destination at that time given by Heybroek and Co., and was accordingly condemned. The present appellants, while not admitting these facts, to which indeed they appear not to have been privy, were not in a position to contest the President's findings and condemnation. This may have been their misfortune, but it cannot affect the case. They are a firm of Mattsson Peterzens and Co., consignees named in the bill of lading of another portion of the coffee pursuant to a contract of purchase and sale dated before the shipment, the terms of which were cost and freight Gothenburg, payment at sight on a Swedish bank, who confirmed the credit by telegrams to Santos. The Swedish bank met this draft before the seizure but after the ship had sailed. This parcel of coffee was not shown to have had any ulterior enemy destination; on the contrary, it was admitted to have been in itself the subject of a legitimate transaction.

In the case of the second voyage of *The Kronprinsessan Margareta,* the claimants and appellants are Messrs. Bergman and Bergstrand. Coffee was shipped by Diebold and Co., under a bill of lading dated May 8, 1916, consigned to Messrs. Dahlen and Wahlstedt. This parcel had in fact an ulterior enemy destination and the President condemned it as contraband, but it is contended that it was not liable to condemnation, and therefore not capable of infecting other godos in the same ship, as the Order in Council of October 29, 1914, respecting immunity from condemnation of conditional contraband, consigned to a named consignee at a neutral port of discharge, was still in force and applied to it. There is, therefore, here a question whether this immunity had or had not been revoked before June 15, 1916, the date of seizure. The appellants, Messrs. Bergman and Bergstrand, bought other parcels of coffee from Diebold and Co., under contracts effected before shipment, and were the consignees named in the bill of lading. Their coffee was only destined for Sweden. The terms of

these contracts provided for payment by sight reimbursement credit on a Swedish bank, but the draft was not met until after the date of the seizure.

The remaining case, that of the first voyage of *The Kronprinsessan Margareta*, is rather more complicated. There are four claimants and appellants—Messrs. Engwall, Berg and Hallgren, Levander and Ofverstrom—all neutrals importing for neutral consumption only. An enemy firm, Goldtree, Liebes and Co., in Brazil, made shipments of coffee, of which, in addition to the parcels claimed as above, one was condemned by the President as having an ulterior enemy destination and as being the property of the shippers at the date of seizure. The appellants all bought their parcels under contracts made after shipment, except Levander. The terms of his contract were f. o. b. Acajutla, payment 90 per cent. against bill of lading and balance on delivery, but he, like the other appellants, did not take up the bill of lading and make any payment until after the date of the seizure. In all these cases the appellants were innocent and ignorant of the enemy destination of the infecting parcel.

It will be convenient to consider the nature of the rules impugned and the reasoning and authority on which they rest before dealing with the particular circumstances of the cases under appeal, especially as the application of these rules is complicated by the fact that the purported transfers of ownership have all been effected by transfers of documents representing the goods while afloat and by the fact that, in so far as the position of enemy transferors has to be considered, the appellants further invoke the Declaration of Paris.

For about one hundred and fifty years at least the law of prize has contained two settled rules, one which refuses to recognize transfers of the ownership of movables afloat from an enemy transferor to a neutral transferee, when unaccompanied by actual delivery of the goods, and the other, which condemns, as if contraband, any goods which, though not condemnable in themselves, belong or are deemed to belong when captured to the same owner as other cargo in the same vessel, which itself is liable to condemnation as contraband. It is strictly with owners that these rules deal, and although an owner is normally the person who has and exercises control over goods which belong to him, there is no warrant for saying that either rule refers to anything but ownership. It is not the case that a neutral, who could not otherwise establish such ownership as the law will recognize, is entitled to be treated as if he had done so, because he can show that he has by personal contract acquired a right to control the goods in certain events, nor is it the case that enemy ownership of goods, so associated with contraband as to become liable to confiscation, may be disregarded if the enemy ownership does not happen to be made active by the exercise of actual control, or if the enemy owner's contractual position has made him indifferent to the fate of his goods. Upon the authorities it is also clear that the above-mentioned refusal to recognize

transfers does not apply when both transferor and transferee are neutral, apart from special circumstances affecting them, and that the common ownership, which involves goods, not in themselves contraband, in the condemnation of other goods which are condemned as contraband, is common ownership which subsists at the time of the seizure and has not previously been determined.

Their Lordships are fully aware that some Continental jurists have criticized the rule of infection adversely, and that Continental prize courts have not always accepted it, though it has long been adopted in the United States and more recently in Japan. They are, however, bound by the decisions of their predecessors, which, consistent as they are, it is too late to overrule and impracticable to distinguish. They would observe that, valuable as the opinions of learned and distinguished writers must always be, as aids to a full and exact comprehension of a systematic Law of Nations, prize courts must always attach chief importance to the current of decisions, and the more the field is covered by decided cases the less becomes the authority of commentators and jurists. The history of this rule is obscure. A reference to some of the proclamations in Rymer's "Fœdera" suggests that it may have had its origin in the practice followed by the executive during the 17th century in successive wars, and the theories on which writers like Zouch, Bynkershoek and Heineccius appear to proceed, seem rather to have been an effort to find in their erudition some *ex post facto* warrant for an accepted rule than a historical statement of the reasons which actually guided those who laid it down. Sir William Scott found it well settled, and if he appears to take some credit to the courts for mitigating the harshness of an older time, this points rather to the substitution of legal doctrines for executive practice than to the exercise of any assumed dispensing power by courts of prize.

That the so-called doctrine of infection does not really rest, in spite of many passages which suggest it, on the personal culpability or complicity of the owner of the goods is shown by the fact that, if it were so, excusable ignorance would be an answer, and for this there is no authority. The term is as old as the Treaty of Utrecht, but the doctrine is perhaps unfortunately named. From the figure which describes the goods as contaminated when seized, the mind passes to the analogy of a physical taint, which runs through the entire cargo in consequence of its being in one bottom, and begins on shipment or at least on sailing. Hence, "once infected always infected" is assumed to be the rule, and a buyer would get a tainted parcel, even though he became owner before seizure, and was recognized as such. This is inconsistent with the view that the rule is a penal rule, as it certainly has been said to be, but it is argued that the penal effect is only accidental and that the real foundation is the belligerent's right of capture, which may arise as soon as the ship gets out to sea. Infection has then attached to all the goods afloat in one common owner-

ship, and to purge it by a subsequent transaction and transfer of ownership on land would be to defeat an accrued belligerent right.

This reasoning is answered as soon as it is appreciated that "infection" —that is, the liability of a particular owner to a derivative condemnation of his goods—is not a quality of the goods themselves, but is an incident of the owner's position, when the seizure is made and the captor's right arises. This consideration operates in two ways. It fixes the critical moment as the time of seizure and makes liability to condemnation depend on the facts as they are found to be; but it also establishes that by those facts the claimant must stand or fall. His liability is not in the nature of punishment, nor does it involve *mens rea*. It does not depend on his having formed or having abandoned an intention to send the goods in question to an ulterior enemy destination. The destination of the goods is a matter of fact, by whomsoever it is given, and, when transit to that destination is in progress, this may make the goods themselves absolute contraband. When once it is found that, at the time of the seizure, the same person was owner of goods on board and embarked in the same transaction or transit, of which the ulterior destination involved their condemnation, and of goods bound for a neutral port without any ulterior destination, neither the captor nor the court is called on to investigate his mercantile operations as to these other parcels—an inquiry complex and remote, in which the claimant has all the information and the captor all the disadvantage—but these goods also are involved in the condemnation.

Neutrals, however, must be taken to accept the consequences of the belligerent's legitimate exercise of all his recognized rights. If cargo has in fact such an ulterior destination as makes it liable to condemnation, that consequence follows independently of the actual owner's knowledge, intention, or interest for *res perit domino*. It is accordingly beside the mark to say that the appellants were innocent parties themselves; that they never interposed in the war; that, so far as they knew, all the goods with which they were concerned had a final neutral destination; that if their buyers had arranged otherwise it was unknown to them and unsuspected; that guilty shippers escape because they have been paid, and guilty sub-purchasers because the goods have been intercepted and they are not liable to pay, and that thus the penalty falls for the offence of others on the shoulders of the party who of all is the most innocent.

It has been contended that control and not ownership is the real test, so that either control, divorced from ownership, when vested in a neutral will avert condemnation, or bare ownership in an enemy, if devoid of control, will be so innocuous as to neutralize any infection. It may be doubted if this point really arises. None of the appellants here had control, as distinguished from a contractual right to obtain control on taking up the documents and thereby becoming owner, and, unless in the cases of *The Rena* and *The Parana* the intention was to retain, if anything, only a lien

by way of security and not the general property, none of the transferors were anything less than owners, who had contracted to give control and ownership as well, upon the due taking up of the documents.

In any case, however, there is a fallacy in the argument. In cases like *The Hamborn* (35 *The Times* L. R., 726; [1919] A. C., 993) control is looked to instead of the mere *persona,* in which, according to municipal law, the ownership resides, because under the rules there applicable enemy character is the question and civil property is not. The rules now applicable adopt the test of ownership and not that of enemy character. They may be criticized or impugned on other grounds, but if they are recognized and the question is merely as to their application, they must be accepted as they stand.

It is objected that the rule "infects" goods which are in themselves free from all objection, by reason of what has been done with other goods over which the claimants had no control, and which in some cases received their enemy destination from consignees whose design was unknown even to the enemy shipper. The rule neither penalizes nor deters the enemy shipper, especially if it is applied in cases where he has been fully paid. It only operates to pass what belongs to an innocent neutral into the pockets of the captors.

Though this kind of deterrent is not always of direct and obvious efficacy, few modes of deterring contraband trade are more effectual than to establish a rule, known by and applicable to all, that the inclusion by a shipper among his other shipments by the same vessel of one parcel having in fact an ulterior enemy destination may lead to the condemnation of the whole. On the other hand, the adoption of the date of the seizure is a great protection to the innocent neutral. Just as the general rule is that a ship is not open to proceedings merely for having carried contraband on a past voyage, so goods are liable to infection not because they formerly belonged to an owner of contraband, but because they are found to do so when the captor's inchoate title by seizure begins. If the common ownership existing before the seizure had then come to an end by means which are valid in prize, this liability does not arise; if it continues till after the seizure, a new and neutral owner, acquiring ownership only after seizure, though nothing forbids his acquiring title from a belligerent, can have no better right as against the legitimate captor than to stand in the shoes of the owner, from whom he derives title, as they were when the goods were seized, and he, by reason of his common ownership of both classes of goods, would have forfeited them all. At the time of the seizure the subsequent transferee has acquired no right to object, and, the goods having been legitimately brought into court for condemnation, a claimant on a title not completed until after seizure must obtain them, if at all, only by the aid of the court and only on the terms of accepting the law there administered as binding upon him.

The rule against recognizing transfers of enemy goods while at sea, if unaccompanied by actual delivery and transfer of possession, is so well established and is now so ancient that its authority cannot be questioned or its utility impugned for the purposes of a judicial determination. Its application assumes that the circumstances of the shipment, and the dealings with the shipping documents and otherwise, are not such as to make the shipment itself an actual delivery of the goods to the transferee through his agent the carrier. It assumes also that a documentary transfer has taken place in good faith by a real and not a sham transaction, and that in pursuance of that transfer rights have been acquired by the transferee which in other courts not bound by such a rule would be valid and enforceable. With sham transactions courts of prize would deal in another fashion; with incomplete transactions insufficient to transfer rights, no court would deal at all. The expression "mere paper transaction," sometimes used, does not imply that something unreal or ineffectual in itself is under discussion. It serves to draw attention to the fact that the transaction is unaccompanied by any dealing with the goods themselves, such as by its overt or notorious character would serve to inform the captor as to the subject which he seizes and the nature of the right, if any, which he may be entitled to acquire in consequence. The history and the theory of the rule, neither of which is now very clear, are too inconclusive to add weight to the rule itself or throw light on its true application. It appears to have been regarded as a particular example of a wider principle, that the national character of movables cannot be changed while they are at sea by any independent dealings or occurrences. Thus, in *The Negotie en Zeevaart* (referred to in 1 C. Rob. at p. 108), decided on appeal in 1782, the question was whether a ship, which went to sea a Dutch ship, had ceased to bear that national character when she was taken, because the Dutch colony of Demerara, from which she sailed, had before her capture become British by capitulation to the British Crown. It was held that she had not. This was followed by *The Danckebaar Africaan* (1 C. Rob., 107), where the question was whether the capitulation of the Cape of Good Hope, which had taken place after the ship sailed but before her capture and had made British subjects of the Dutch owners, had not also entitled them to claim their ship on arrival at the Cape as prize on the ground that there had been in fact a capture of British property. So strict was the rule even then that the claimants, though British subjects themselves at the time of capture, could not be heard to assert that title against the presumptions arising when the ship sailed. Shortly afterwards it was accepted in *The Vrouw Margaretha* (1 C. Rob., 336) that there was no recorded instance of a claim being sustained for goods purchased of an enemy in transit in time of war, for the practice of the prize court to look only to the time of shipment was already invariable.

It has been contended that this is a rule applied for the purpose of

determining the status of goods, and that it is only so applicable; that it decides whether goods have enemy or neutral character, but not whether they, being neutral and in themselves innocent, can be condemned as having been infected by other cargo which is contraband. No authority has been cited for this proposition.

Whether the foundation of the rule be taken to be the tendency of documentary transfers to encourage evasion and fraud, so as to defeat a belligerent's rights in one way, or the tendency of changes of ownership in transit to make the right of seizure at sea precarious, and so to defeat in another way the correlative belligerent right—namely, the right to obtain a condemnation—the reasoning is equally applicable to such cases of exercise of belligerent rights as those now in question. Its application in either case involves the proposition that the goods claimed belong in the eye of the law either to an enemy or to another neutral, and, such prior owner being a person unable to claim the goods owing to their destination or their association according to the established law relating to contraband, the captor's claim to condemnation succeeds.

It was urged that if this rule originated in a question of the national character, under which the ship and goods sailed, it would have no application except to cases where the national character—*i.e.*, enemy character—was the ground upon which condemnation was or could be prayed. There is a confusion here. What can it matter whether the form of the decree is that there is a condemnation because the goods are proved to be enemy property in fact, or because the goods are deemed to be enemy property in law? The condemnation must equally be decreed, and the determination that the goods are enemy property according to the laws of property generally, or according to the particular laws by which in a court of prize the question of enemy property is to be tested, is equally an application of rules of law which bind the court. To proceed a step further, if the determination is that the goods are enemy property, and such as would enjoy the protection of a neutral flag, were it not for the fact that being contraband they lie outside of that protection, the result is the same, namely, that a forfeiture of goods, which the court is bound to regard as being still enemy goods, follows under the circumstances of the case. The rule, stated in 1799, as being a settled rule, is still logically as much part of the process by which the liability of goods shipped by enemy merchants is to be determined as if the case had arisen before 1856, or as if the issue, enemy goods or neutral, arose directly, as it did in *The Odessa* (32 *The Times* L. R., 103; [1916] 1 A. C., 145), and the rule was applicable that ownership and not lien or pledge forms the test which guides the court.

An attempt was made to use this Board's decision in *The Baltica* (11 Moore, P. C. 141) by which their Lordships are bound, as a further ground for excluding the application to these cases of any rule which denies recognition to titles obtained through a documentary transfer made while the

goods are at sea. It is true that in that case Mr. Pemberton Leigh, delivering the judgment of the Board, states that there are two possible foundations for the rule—the one that documentary transfers lend themselves to fraud and concealment, and the other that they tend to defeat the belligerent's right of seizure—and then describes the former as the "true" view. It was not, however, any part of the question then to be decided to settle the foundation of the rule, since its mere existence sufficed for the determination of the case, and in the circumstances of that case and the contemporaneous case of *The Ariel* (11 Moore, P. C. 119), the danger of collusive transfers was the one which was most clearly to be apprehended. Their Lordships do not regard this judgment as declaring the view that these transfers tend to defeat a belligerent's rights to be a false view. Indeed, it is plain that in *The Daksa* (33 *The Times* L. R., 281; [1917] A. C., 386) this Board was of a contrary opinion. The two views are not really inconsistent. A collusive transfer, the truth of which the court has no means of penetrating, does defeat the belligerent's rights. On the other hand, the transaction may be genuine, as in *The Baltica* (*supra*) it was, yet not be recognized. It cannot be doubted that the reason was not that the court was afraid of being deceived or felt itself incapable of ascertaining the truth, but because, if it were deceived or left in doubt, it would be unable to do justice to the belligerent captor's claim. It is, therefore, no answer to say that there was no collusion about the present transfers. They fall within a rule which recognizes no personal or particular exceptions, and if the goods were liable to be forfeited, assuming them to be rightly stamped with enemy character when seized, an admission of a documentary transfer to a neutral would defeat the captor's rights.

As these rules are undoubtedly well established, the appellants have been principally constrained to impugn their application to the facts of the present appeals. The circumstance that they do not appear to have been applied together in the same case before is merely accidental, and if the result seems to wear an artificial appearance that is an accident also. The same may be said of the observation that in the old cases the infecting parcel has been shipped direct to the enemy by the common owner himself, and that infection in consequence of an ulterior enemy destination is new. This is merely a consequence of the development of the doctrine of continuous voyage.

Two further arguments are chiefly relied on. The first, that the rule as to infection has been virtually abrogated by the Declaration of Paris; the second, that the rule as to transfers of goods while at sea and without delivery is inconsistent with modern mercantile practice, and therefore ought no longer to be followed. Their Lordships will, of course, pay every possible regard to such an instrument as the Declaration of Paris, but it is necessary to point out exactly what, in this connection, its provisions were. A neutral flag protects enemy goods from capture as enemy goods; in a

neutral bottom enemy goods are placed on the same footing as neutral goods. The declaration, however, is not a charter of immunity in all circumstances for enemy goods under a neutral flag, nor does it protect goods simply as being enemy goods, which, if neutral, would have been liable to condemnation. The declaration says nothing about the criteria by which the enemy or neutral character of goods is to be determined; it says nothing about the doctrine of "infection"; it says nothing about admissibility or rules of evidence; it says nothing of the rights of a belligerent to repress traffic in contraband of war, or of the modes by which courts of prize give effect to and protect those rights. It is said that the grounds on which so-called "paper transfers" of property at sea are disregarded have no application in the present case, for the goods, even in the cases where they were enemy property when shipped, were covered by the neutral flag and not even potentially capable of being made good prize, and have since been transferred in good faith and in the ordinary way of trade. The answer is simple. They were capable of being made good prize, even though they were enemy goods in a neutral bottom, for if they were contraband, or were "infected" by contraband, being in a common ownership with contraband when seized, nothing in the Declaration of Paris either expressly or impliedly protected them.

It is then said that, if so, "infection" has no application, for this principle is a punitive principle and, as a neutral is entitled to trade in contraband at his peril, there is nothing for which to punish. He has not intervened in the war or sided with one party against the other, and he has carried on his own neutral trade in his own and a legitimate way. He is really being penalized in an abortive attempt to punish an enemy, who escapes the penalty. Accordingly, the maxim *cessante ratione legis cessat ipsa lex* applies equally as in the case of the doctrine discussed above. If the rule against recognition of transfers of goods at sea ceases to apply, because these goods cannot be good prize even if enemy owned so that the reason of the rule is gone, equally, when the goods are proved to be neutral property, the doctrine of infection ceases to apply, for that was laid down in order to punish, and this trade is now admitted to be innocent though hazardous. Again the answer is simple.

Penalty and punishment in this connection are in a further respect unsuitable terms, namely, that they might seem to question a neutral's right to ship or to buy contraband at his peril. Neither belligerents nor courts of prize exercise a general correctional jurisdiction over the high seas. The ownership of contraband goods, though often spoken of as if it were a guilty departure from the neutral duty of impartiality, is now well recognized as being in itself no transgression of the limits of a neutral's duty, but merely the exercise of a hazardous right, in the course of which he may come into conflict with the rights of the belligerent and be worsted.

The language about "innocent" and "guilty" goods, about the

"offence" of carrying contraband and about taking contraband goods "*in delicto*" and imposing a "penalty" accordingly, was effective and apt in the connection in which it was used, but that connection involved a decision, not as to the rationale of the doctrine of infection, but only as to its application in particular cases. The decisions do not preclude their Lordships from recognizing that it is not the function of courts of prize to be censors of trade generally during war; that, if neutrals have the right to carry contraband, belligerents have the correlative and predominant right to prevent it; and that the doctrine of infection was established and still stands as an effectual deterrent, the need and justification for which have by no means passed away.

As to the changes in mercantile practice, it has already been indicated in *The Odessa* (*supra*) (pp. 160-161) that trade machinery, which is the growth and creation of years of peace, cannot supersede the settled law of prize. In time of war the remedy is for neutrals to change their practice and buy before shipment, and, if they pay after shipment and before they get the goods, they must take their risk of infection. In the long intervals of peace between war and war, commerce flourishes and commercial practices and modes of business change and develop while the law of prize is in abeyance, but merchants have no power to alter or affect this law, nor have prize courts any discretion or authority to abrogate settled and binding rules on the ground that their application is inconvenient to or inconsistent with the smooth and regular working of modern commerce. Nor is it the case that, when the rules now under discussion first grew up, either the use of documents as symbols of goods afloat in connection with passing the property or the practice of loading general ships with an aggregate of parcels, intended to be distributed among sundry consignees, was unfamiliar or unknown. In any case, and although prize courts will always be mindful of the just rights of neutrals, it is certain that none would be greater sufferers than neutral merchants if it were once admitted that in prize courts fixed principles could be disregarded and settled law could be set aside in hard cases, for cases may be hard to belligerents as well as to neutrals. The President, Lord Sterndale, made some observations in his judgment in the case of *The Rena* which show how much he was impressed with the argument that a combination of these two rules, leading to the consequence of condemnation in the present cases, is harsh and impolitic, but it is plain that if mere considerations of particular hardship prevailed to alter the application of the law, the whole uniformity of the system administered by prize courts would be impaired. It is plain also that, if a claimant's ignorance could be relied on as an answer to the captor's rights, nothing would be easier than to defeat those rights in almost every case. Strictly speaking, a neutral is not in a position to complain of being penalized by the doctrine of infection, when his transferor and the common owner of his parcel and of the

contraband parcel is an enemy, for, if the court cannot recognize his title, he fails because he is not the owner, not because he is subject to a general doctrine of infection. It is otherwise when he takes from a neutral, but here again, if he is not owner at the time of seizure, he fails because he has no right to complain of the seizure or to defeat the rights which the captors derive from it, and if, nevertheless, he has paid his money, he loses it because, before doing so, he failed to ascertain the facts as to the goods and to make sure that the documents taken up would avail him to obtain delivery.

The result of these considerations is that, subject to the exceptional points which follow, the appellants were rightly held to be affected by the doctrine impugned and their claims were properly dismissed. It remains to consider three special cases, in two of which it is contended that the appellants became owners before the commencement of the voyage, whilst in the third reliance is placed on the terms of the Declaration of London Order in Council, dated October 29, 1914. It is convenient to take this last case first.

In the case of *The Kronprinsessan Margareta's* second voyage, two firms, Dahlen and Wahlstedt and Bergman and Bergstrand, each claim portions of her cargo. Dahlen and Wahlstedt admitted that their parcel had an ulterior enemy destination, but claimed that the Order in Council of October 29, 1914, applied to it, and, in accordance with the language of Article 35 of the Declaration of London, waived the Crown's right to ask for its condemnation. The question is whether that Order in Council, so far as it would affect this parcel, had been revoked prior to the seizure on June 15, 1916—that is to say, by the Order in Council of March 30, 1916—and this is a question of construction.

In general, when the Crown exercises such power as it has to affect the rights of neutrals by Order in Council the terms of that order, to be effectual, must be unambiguous and clear. In *The Kronprinsessin Victoria* (35 *The Times* L. R., 74; [1919] A. C., 261) their Lordships have so held. In the present case the neutral rights affected are such as subsist by virtue of a prior Order in Council intimating an intention to waive a portion of the full belligerent rights of the Crown for the time being, but this circumstance does not affect the construction of the order under discussion. The Declaration of London Order No. 2 had announced that the Crown would observe certain articles of the Declaration of London, of which that now material was Article 35. No doubt that was a concession to neutral interests, and Dahlen and Wahlstedt's transaction would fall within the terms of the article.

The Order in Council of March 30, 1916, after reciting that doubts have arisen as to the Declaration of London Order No. 2, says in Article 1, "The provisions of the Declaration of London Order in Council No. 2, 1914, shall not be deemed to limit nor to have limited in any way the

right of his Majesty to capture goods on the ground that they are conditional contraband, nor to affect or to have affected the liability of conditional contraband'' to be captured in circumstances such as those of the present case; in other words, that for the future his Majesty no longer assents to any limitation on his full belligerent rights in the matter in question, the terms of the Declaration of London Order No. 2 notwithstanding. In what respect are these words wanting in clearness and how do they fall short of an unambiguous withdrawal of any prior waiver of the Crown rights as affecting certain neutral shipments? They are more than a mere warning that the Crown can, by revocation of prior waivers, return to the exercise of its full belligerent rights unimpaired, nor was there any occasion for such a declaration.

Attention is first drawn to the words ''shall not be deemed . . . to have limited'' those rights. As these words refer to the past and to the consequences of transactions which have already occurred, they are clearly severable from the other words of the sentence which refer to the future. Even if they are ineffectual, for an Order in Council cannot give to a prior order any other validity or effect than that which its terms, truly construed, possessed according to law, they do not diminish the full effect of the other words as to matters within the undoubted competence of his Majesty in Council, nor do they cloud or obscure their meaning. Their Lordships think it needless and inexpedient to surmise with what object these words relating to past occurrences were inserted. The formula, now so common, which declares something to be deemed to have been what it really was not, is sometimes no doubt convenient, but the limits of its utility are soon reached and they may have been exceeded here. This their Lordships have not to consider. It is enough that the obscurity of the words in the past tense, such as it is, does not touch those in the future.

The next point is that the order of March 30, 1916, itself in Article 2 virtually makes a reference to Article 35 of the Declaration of London as modified by Article 1 (iii) of the order of October 29, 1914, which is only consistent with the continuance of that article in force, and by Article 5 expressly revokes any recognition of Article 19 of the Declaration of London, thereby showing that the intention is to name articles no longer recognized and not further or otherwise to withdraw the Declaration of London Order No. 2. Their Lordships can only observe that, the question being one of clearness or ambiguity, the clearness is on the side of Article 1 of the order of March 30, 1916, and that Article 2 is not clear enough to preserve what the words used *de futuro* in Article 1 have clearly renounced. The effect of Article 2 is not a point that they need further pursue. As to Article 5 there may be more ways than one of being clear, but the use of general terms in Article 1 is not ambiguous merely because the use of particular terms is adopted in Article 5, nor does the first ex-

pression fail to be clear merely because, following the model of the second, it might have been clearer.

The last contention is that the express revocation of the Declaration of London No. 2 Order in terms and *in toto* by the Maritime Rights Order in Council of July 7, 1916, is in itself a ground for construing the order of March 30, 1916, wherever possible, as being something less than a revocation, and it is said that the order of July, 1916, recognizes that some part of the order of October, 1914, then still subsisted. In *The Kronprinsessin Victoria* (*supra*) their Lordships observed that its whole tenor, the recitals, the repeal and the re-enactment are consistent only with the view that the order of October 29, 1914, had up to that date remained in full force and unaffected, and such was doubtless the view which those who framed that order in fact entertained. In the case of an Order in Council, however, the same weight does not attach to the view of the existing law adopted by its authors as attaches to the language of the Legislature when amending existing law, and in that case their Lordships had not to consider the order of March 30, 1916, at all, and decided nothing about it. Doubts had arisen and continued to arise as to the effect of these Orders in Council and it might well be thought right *ex abundanti cautela* to declare in July, 1916, finally and in the most general terms the revocation of an order, which had already been cancelled, not indeed in such downright language yet with sufficient clearness.

Accordingly the claim of Dahlen and Wahlstedt fails and it is admitted that the claim of Bergman and Bergstrand is covered by the same considerations, for the shipper of the two parcels was the same person and an enemy; and no title having been acquired by Bergman and Bergstrand before the commencement of the voyage (subject to what is hereafter said upon the effect of a confirmed credit on the transaction), the enemy destination, which made Dahlen and Wahlstedt's parcel of conditional contraband liable to be condemned, would also infect the parcel claimed by Bergman and Bergstrand and warrant its condemnation also as the property in it was, at the time of seizure, in the same owner as the property in the contraband parcel.

The peculiar conditions produced by the war have led to two new features in transatlantic commerce, not necessarily connected but, as it happens, both present in these appeals. One is that all the insurances are effected in Europe by the consignees; the other that the consignor stipulates for a confirmed bank credit, against which he draws. The first appears to have been due to the difficulty of covering the war risks in America; the second doubtless arose from the fact that commerce has been carried on in new channels and not always with persons of unimpeachable personal repute, and it had the additional advantage of minimizing the inconvenience to the seller of sharp fluctuations in the rates of exchange. The question now raised is whether, in circumstances which include especially

these two practices, an intention can be inferred to pass the property in cargo before the voyage commences, independently alike of payment for the property or delivery of documents. If it can, the neutral buyer, becoming owner from the neutral seller and shipper before the beginning of the transit, to which the doctrine of infection applies, escapes from the risk of it. Further, in the two cases when the sellers and shippers were the enemy firm of Diebold and Co., the transaction of purchase would be complete before the point of time at which the rule against documentary transfer of goods afloat begins to apply. These points arise in the cases of *The Parana*, *The Rena*, and *The Kronprinsessan Margareta*, on her later voyage, but, as the facts are similar in all three, the argument was presented mainly on those of *The Parana*.

In the case of *The Parana* the terms stipulated on behalf of Urban and Co., the neutral sellers and shippers, were "cost and freight Gothenburg . . . reimbursement A/S on Malareprovinsernas Bank, Stockholm." The buyers applied to this bank to open a credit available to the sellers and to confirm to the latter the fact of their having done so, and they deposited a sum of money to make the credit effective. The bank did cable confirmation of this credit in the following terms, "Confirmed credit opened Kroners 100,000 account Lundgren Rollven against 2,000 bags coffee shipment Parana." The shippers thereupon took bills of lading making the coffee deliverable to the consignees' order and sent them with an invoice and a sight draft for its amount, through collecting agents of their own, to be presented together to the bank in Sweden. The appellants contend that the effect of this transaction was that the property in the coffee passed from the sellers to the consignees before the commencement of the voyage, and that infection has accordingly no application to their case.

The passing of property being a question of intention is ultimately a question of fact. There is no evidence of the intention of these parties beyond the inferences to be drawn from their situation and interests and from the mercantile operations which they conducted. What law they supposed would govern their transaction is not shown, nor is any evidence given of the provisions of any foreign law and, for the reasons given in *The Parchim* (34 *The Times* L. R., 53; [1918] A. C., 157), the law to be applied must in these circumstances be that of England so far as the matter is one of law at all. That law has attached definite presumptions as to intention to definite courses of procedure and modes of expressing and dealing with common mercantile instruments.

If the shippers had insured the goods and had attached the policy to the draft, and if they had taken the bills of lading to their own order, no question could have arisen. Again, if in pursuance of the contract the consignees had insured for the benefit, as between buyer and seller, of whom it might concern, there would have been little doubt possible. Their Lordships will assume, because the argument appeared to assume on all

hands, that the insurance effected in Europe was for the consignees' benefit only, though they are by no means satisfied that it was so, and that none was effected by or for the consignor. The importance which always attaches to the incidence of insurance in international commerce makes this a significant point.

Again, importance attaches to the fact that the shippers, having loaded the coffee on a general ship—a bailment to the carrier—took the bills of lading to the consignees' order. Without the consignees' indorsement they could not thereafter demand delivery ex ship as a matter of course, though without delivery of the bills of lading to the consignees they in their turn would not obtain delivery in the ordinary way of business. The 2,000 bags bought by Lundgren and Rollven appear to have been part of a total quantity of 4,000 bags shipped by Urban and Co. (see Parana Record, pp. 35, 42, and 45). These bags were lettered and numbered in different ways, probably according to the place of origin and quality of the coffee, and, unless the other 2,000 bags of similar coffee were nevertheless numbered and marked in a wholly dissimilar way of which there is no evidence, it would seem from the specification sent forward that specific bags were not appropriated to the contract of Lundgren and Rollven. Their contract was to be satisfied out of the bulk on discharge, and until some bags were then appropriated to the holders of their bills of lading, it could not be predicated of any particular bag that it was one of those deliverable to the order of Lundgren and Rollven. In the case of *The Rena* and *The Kronprinsessan Margareta,* however, it does not appear that there was any other cargo on board shipped by the same firm and forming a bulk of which the parcels in question were only an undivided part.

There seems no doubt that business of this kind was such as the Malareprovinsernas Bank was always ready to do for a respectable customer, whose credit was good or who put it in funds for the purpose. The customer applying formally to the bank for the credit was in each case the buyer. There are some expressions in the letters of the sellers' agents in the case of *The Parana* which suggest that they had made some arrangements on the sellers' behalf with this bank prior to the completion of the agreement of sale, so as to ensure an available credit ready to be operated upon, but no such arrangement is forthcoming or is proved, nor is there any suggestion of it in the other cases, and it does not appear that anything more passed between the bank and the consignors than a cabled statement to the effect that "as requested we inform you that Lundgren and Rollven have opened a credit with us, out of which a draft with bills of lading can be met." Their Lordships are unable to infer that, by English law at any rate, any enforceable obligation arose between the consignors and this bank. There was no contract of guarantee. The Santos cargo certainly, and the Rio cargo in all probability also, was shipped before the credit was confirmed, for in the latter case the bill of lading and the confirmation of the

credit are on the same day. No letter of credit was issued; no case of estoppel has been made, and indeed the facts stated by the bank were true; no request for shipment or consignment to the appellants was made by the bank; no promise to meet the draft as an obligation *de futuro* arose on any consideration moving from the consignors to the bank. Their Lordships do not doubt that in the ordinary course this bank—an institution against which nothing has been said or suggested—would scrupulously apply Messrs. Lundgren and Rollven's funds in their hands to meeting the consignors' draft, duly presented. Whether the bank could have resisted, if their customers had claimed to withdraw their funds before presentation of any draft, does not appear, but there is no need to suppose on either side any possibility of such a course being attempted. In the case of *The Kronprinsessan Margareta* the form of application to the bank provided for the irrevocability of the credit up to a certain time, and for this a blank was left, but it is noticeable that Messrs. Bergman and Bergstrand did not fill up the blank. It is enough to say that no obligation by the bank to meet the draft, which the drawers of it could have enforced, is shown to have arisen. Not merely was there no payment of the consignors on shipment of the goods, there was not even material for a novation. In spite of the confirmation of the credit they were and remained unpaid vendors till a much later date.

Now two things are quite plain. The consignors did not propose at any time to rely for payment on the mere personal credit of the consignees, and they carefully kept the bills of lading in their own agents' hands until the draft was met (see Moakes *v.* Nicholson, 19 C. B. N. S., 290). But for the absence of a policy of insurance they strictly pursued the same course of dealing with the documents as if there had been a c. f. and i. sale.

In these circumstances what can be inferred as to the passing of the general property? What is there to show an intention to pass that property for anything less than payment, and what motive is there for such an intention? The appellants, Messrs. Lundgren and Rollven, have to show that it passed to them and passed, too, before the beginning of the voyage. If it did, then the consignors no longer owned the goods and had nothing to show against them except a draft of their own, which could not be enforced, and a bill of lading which would not entitle them to delivery of the goods, though its retention might seriously inconvenience the new owners, the consignees. Rights to stop *in transitu* or to exercise an unpaid vendors' lien need hardly be discussed, for, on a question of intention in fact, as to which there is a good deal of evidence, it would be artificial to assume that the consignors' minds were actually determined to the contrary by consideration of legal remedies, of which it is not shown that they had any knowledge, let the legal presumption be what it will. It is said that, as a matter of business, the confirmed credit relieved the consignors of all further concern in the goods, for they could have no doubt that they

would be paid by the bank in any event and that the failure to insure is proof positive of this. It may be so, though their Lordships do not desire to express any opinion as to the rights of the parties if the coffee were known to be already lost at the time of the presentation of the draft, but it seems clear that the consignors desired to retain an interest in the goods, otherwise why should they retain the bills of lading in their agents' hands? It is said that this only points to an intention to reserve a special property as security, but the omission to insure would be equally significant in this case, and there is no reason why, as a matter of actual intent, a special and not the general property should have been reserved. The case might be very different if the bills of lading had been forwarded to Lundgren and Rollven direct (*Ex parte Banner,* 2 Ch. D., 278). As it is, Shepherd *v.* Harrison (L. R., 5 H. L., 116) would surely apply, if on presentation of the bills of lading with the draft there had been a retention of the first without payment of the second. There may be explanations of the shipper's election to be his own insurer of the coffee till the sight draft should be met, but, however this may be, there is nothing to outweigh the significance of a dealing with the documents so nearly identical with that in an ordinary transaction c. f. and i.

No authority was forthcoming, which proved to be completely in point. Cases, in which it has been held that taking the bill of lading in the shipper's own name negatives any unconditional appropriation to the buyer by the delivery of the goods on shipboard and indicates one conditional on the documents being taken up, can throw only an indirect light on the question here involved. Certainly no case was found in which it was held that taking the bill of lading in the buyer's name, while withholding delivery of it until presentation and taking up of the documents, would not be, as an appropriation, equally conditional. Much reliance was placed on *The Parchim* (*supra*), a case not only decided on very special facts, but on facts so different from those arising in the present appeal as not in any way to rule it. That case did not in any degree substitute the incidence of the risk for the passing of the general property as the test to be applied. There the sellers of the entire cargo of a named ship took the bills of lading to their own order, but it was held that the presumption of an intention to retain the property till something was done by the buyer after shipment was rebutted by the special circumstances of the case. The contract was unusual. It was on cost and freight terms, but was by no means similar to that now under discussion. With the exception of the form of the bills of lading, which itself was determined by the sellers' agent without either particular instructions or actual knowledge of the terms of the contract, everything pointed to the intention that the property should pass to the buyer on shipment, though he was only to have possession of the cargo, and the bills of lading representing it, on subsequently paying the price. Special significance was attached to the fact

that, on shipment, or at least on notification of it, the cargo was to be at the buyer's risk and he had to pay, lost or not lost. Meantime the documents were held by a bank *in media,* neither to be transferred to the buyers without payment, nor to be placed at the sellers' disposal, unless and until the buyers failed to take them up. Incidentally it may be observed that, although the loading was only completed after the outbreak of war, the interval was short, the shipment was made in pursuance of a contract entered into before the war, and no point was taken on behalf of the captors, even if any arose, as to the passing of property afloat during war from an enemy seller to a neutral buyer by delivery of documents. The case does not purport to lay down any general rule that a particular mode of dealing with a bill of lading must, whenever it occurs and in whatever circumstances, always prove a particular intention. It is not an authority for the contention that if the bill of lading is taken in the buyer's name this necessarily proves that the goods shipped are appropriated to the contract and delivered to the captain as the buyer's bailee, with a consequent inference of the passing of the property to the buyer on shipment.

In the present case it appears to their Lordships that the retention by the seller of the bill of lading was inconsistent with an intention to pass the property. They think that it was "clearly intended by the consignor to preserve his title to the goods until he did a further act by transferring the bill of lading." The special circumstance of the existence of a confirmed banker's credit in this case is only indirectly relevant. It no doubt enhances the likelihood that the bills of lading will eventually be taken up and the goods be paid for, and so diminishes the importance to the seller of being still able to say that the goods are his, but it is not direct evidence of intention; it is only a reason why a particular intention is more likely to have been formed in such a case than in others. The intention has still to be inferred, principally from what was done and from the communications made with reference to it, and these point to an intention not to pass the property till the drafts were paid, and it is really rather a reason for intending to get the documents presented and taken up as soon as possible than for an intention not to retain the ownership even until that could be effected. If the seller was paid or was holder of an enforceable contract from a bank for payment, the sooner he passed the property the better, for he was uninsured, but if he was neither he gained nothing by passing the property away. It was not onerous property.

In one respect the appeal succeeds. Of the two shipments by *The Parana,* the draft for the 1,000 bags shipped at Santos was met by the Swedish bank a fortnight before the ship was seized. Thereupon the appellants Lundgren and Rollven became the owners, and there was not any common ownership of this parcel with an infecting parcel at the time of the seizure to justify the condemnation of these 1,000 bags. The decree

appealed against in this case will, therefore, be varied by ordering the release of this parcel, but, as this success is very partial, their Lordships think that it should not affect the costs. As to the other parcel, Lundgren and Rollven fail because the goods at the date of seizure were in the same ownership, namely, that of Urban and Co., as the contraband parcel intended for Hyllen and Kock, which was condemned, and are infected, the Declaration of Paris notwithstanding. Mattsson, Peterzens and Co., fail for the same reasons. They too acquired title only after seizure and, at the time of the seizure, the goods were liable to condemnation. Bergman and Bergstrand fail because Dahlen and Wahlstedt's parcel, not being protected by the Order in Council, infected the rest of Diebold's coffee, and they cannot claim recognition of an ownership which was not acquired by payment till after seizure, and then was only effected by documentary transfer of goods afloat. The claims of Engwall, Berg and Hallgren, Levander and Ofverstrom must be dismissed, for their ownership only arises by documentary transfer of the goods while afloat, which was only affected after seizure, and the goods, when seized, belonged to the owners of a parcel of conditional contraband in the same ship, which had an ulterior enemy destination.

The appeal in the case of *The Hilding* may be dealt with shortly. It relates to 200 cases of fatbacks and 100 of clear bellies in their nature conditional contraband, and covered by bills of lading making them deliverable to Paulsen and Co., as consignees. The 200 cases of fatbacks were the balance of a larger parcel, some of which Paulsen and Co. had appropriated to Weimann and Co., and some to Henrik Lucas as sub-purchasers under contracts previously made. That the goods had an ulterior enemy destination was not disputed before their Lordships, but they were shipped by neutrals on a neutral ship plying between neutral ports and were seized while the Declaration of London Order No. 2 of October 29, 1914, was in force. The appellants, Paulsen and Co., claimed to have bought and paid for the goods and to have become invested with the property in them before seizure. There were on board *The Hilding* also the other cases which E. L. Weimann and Co. and Henrik Lucas purported to have purchased from Paulsen and Co., and the claims to these were put in by Weimann and Co., and Lucas and not by Messrs. Paulsen. To these no claimant appeared at the hearing, and the President, Sir Samuel Evans, being satisfied that they had an ulterior enemy destination, condemned them. He further held that at the time of seizure the property in this parcel had not passed out of Paulsen and Co., and concluded that its condemnation in any case involved the condemnation on the ground of infection, of the parcel of goods now claimed by Paulsen and Co., even assuming that they had proved the ownership to be in themselves. The President further, though his exact finding is somewhat uncertain, does not appear to have been satisfied that Paulsen and Co. ever acquired the property in any of the goods above mentioned.

It is impossible for their Lordships to review the decision of the President that the goods claimed in the name of Weimann and Co. and of their sub-purchasers were to be condemned. The statistical case made by the Crown was sufficient, unless answered, to prove the destination in Hamburg, and no one appeared to answer it in support of the claim. Paulsen and Co. found it necessary to elect whether they should say that as to this parcel they were owners no longer, or that they were owners still. They chose the former course and made no claim; they cannot now be heard to make the claim which they would have made before the President if they had chosen the latter.

Again, in proving their case before him they set up that they had sold to Weimann and Co. and had been paid before seizure, but before the prize court they never gave the date of the payment, which in the usual mercantile course, applicable to this transaction, was the crucial matter. Their Lordships could not allow them to mend their hand and endeavor to supply this deficiency on the appeal. Nor are the inferences satisfactory which were drawn from certain intercepted messages, referring to some customer as having "taken up" some "documents," that remained unidentified. They find it impossible, therefore, to say that the President was wrong in finding that the ownership in the Weimann parcel had not passed from Paulsen and Co. before seizure.

Paulsen and Co. were in fact the persons to whom the goods were consigned in name and in the bill of lading. Were they, however, consignees having actual control, or were they merely intermediaries introduced as the creatures of others? The President does not expressly find either, but it is clear that he found the entire position of Paulsen and Co. to be ambiguous and unsatisfactory. On consideration of the evidence their Lordships also are not satisfied that Paulsen and Co. really controlled either the goods or their destination. The burden of proof was on them and it is only by inference that the President's judgment is suggested to find anything in their favor. It never does so in terms; it expresses doubt as to the passing of the property from Crossman and Sielcken, the shippers, at all. There is ground for thinking that not Paulsen and Co., but some other party provided the funds required and that they were only intermediaries acting as they might be directed. It cannot be said that they have discharged the burden of proof in fact, and accordingly there is no sufficient ground for arriving on appeal at a finding of fact in their favor at which the late President could not bring himself to arrive.

This makes it unnecessary to decide the point which was raised, that the naming of the consignee in the bill of lading, to which the Order in Council of October 29, 1914, refers, only avails to protect contraband goods from condemnation as contraband and cannot be extended to the further waiver by the Crown of its right to claim the condemnation on the ground of infection by goods in the same bottom and in the same ownership with

goods which are contraband. Accordingly Messrs. Paulsen and Co.'s appeal fails.

Their Lordships will humbly advise his Majesty that the order appealed from in the case of *The Parana* ought to be varied by discharging so much of the decree as condemns the 1,000 bags shipped at Santos and by directing their release or payment of their appraised value to the parties who claimed them, without costs, but that otherwise all these appeals should be dismissed with costs.

BOOK REVIEWS *

The Law of the Sea: A Manual of the Principles of Admiralty Law for Students, Mariners, and Ship Operators. By George L. Canfield and George W. Dalzell, with a Summary of the Navigation Laws of the United States by Jasper Y. Brinton. New York: D. Appleton & Co. 1921. pp. xvi, 315.

The publication of this manual is another indication of the revival of interest in maritime affairs which is now so conspicuous in the United States. It is the third number in a series in which volumes on Ocean Steamship Traffic Management and Marine Insurance have already appeared and in which other topics will be treated in later volumes. The scope and limitations of the present manual are thus indicated by the editors: "It is a manual for the student, the owner or the master of a vessel who may desire to acquire information concerning the main facts and principles of maritime law without attempting to acquire such a mastery of the subject as is possessed by an admiralty lawyer." Therefore, while the book deals with law and is written by lawyers, it should not be judged by the standards appropriate to a law book.

The authors have achieved their purpose. In little more than two hundred pages they have given a clear and concise statement of the chief principles of admiralty law as developed by the courts and as found in the statutes. The book is divided into seventeen chapters under such significant titles as Title and Transfer, Owners and Managers, The Master, Seamen, Contracts of Affreightment, Bills of Lading and Charter Parties, Maritime Liens, Collision, Towage and Pilotage, Salvage and General Average, Wrecks and Derelicts, Wharfage and Moorage, and Admiralty Remedies. To a surprising degree in so small a book, the authors have been able to state the facts and to quote from the opinion in many important cases and have thus made more clear the reason for the rules which have been developed. At the end of each chapter is given a list of references to treatises and decisions which may be made the basis for further study.

It would be captious to point out slips in statements of facts, such as the statement that there are several district courts in each State, or errors or lack of clearness which may be attributed to necessary brevity. But it is perhaps not captious to point out that the authors hold the view so widely prevalent that admiralty law is a part of international law. Even

* The JOURNAL assumes no responsibility for the views expressed in signed book reviews.—ED.

though supported by the authority of the United States Supreme Court, the present writer is convinced that this view is erroneous. However much the definitions of international law may vary, they agree in one thing—that it has to do with the relations of nations. But if a British vessel collides on the high seas with a French vessel, and the offender upon arrival in an American port is libeled and redress is given by an American court, no government and no international relation is involved. The wrong suffered is a private wrong and the remedy sought is a private remedy. The law by which the rights of the parties will be judged is the law of the sea—the common law of nations, but not international law.

The authors offer some thoughtful comment upon the need for reform in admiralty law. They point out the chaotic condition of the law, due first to conflicting legislation, and secondly to the lack of judges in the admiralty courts who have been trained in admiralty law. In so far as the chaos is due to legislation, it is in process of being removed through the codification of the navigation laws which the United States Shipping Board, acting under special authority of Congress, is now carrying forward. In so far as it depends upon the courts, a remedy is more difficult. When a committee of lawyers from an important Atlantic seaport once waited upon the then President of the United States to ask that a vacancy in the District Court might be filled by the appointment of a man trained in admiralty, the President, himself an eminent lawyer, informed them, "Quite unnecessary. Any lawyer can learn admiralty law in two weeks." Perhaps the revival of interest in maritime affairs will lead to a demand that the judges who are to deal with the litigation arising from them shall have had some training in the law which they are to apply.

Appendices contain a form of protest, the text of the Merchant Marine Act of 1920 and a Summary of the Navigation Laws of the United States prepared by Jasper Y. Brinton of the Philadelphia Bar. This summary is one of the most helpful features of the book. In a space of about forty pages Mr. Brinton has made a clear and concise résumé of the mass of statutes dealing with navigation. Only one who has himself had occasion to analyze and classify this material can fully appreciate the merit of his achievement.

LAWRENCE B. EVANS.

Le Controle Parlementaire de la Politique Étrangère en Angleterre, en France, et aux États-Unis. By S. R. Chow. Paris: Ernest Sagot & Cie. 1920. pp. 326.

With the World War came an insistent demand for democratic control of foreign affairs. It was expressed in programmes for world-reorganization, agitated in public meetings, and urged in pamphlet literature. Governments were blamed for the catastrophe and there was a feeling that if

wars were to be prevented in future the people of the countries involved should have a larger share than they had in former days in shaping foreign policy. But opinions differed as to whether popular control should be exercised by a referendum to the voters or by the extension of the powers of the legislative at the expense of the executive branch of government, a check upon which was believed to be necessary.

Dr. S. R. Chow in his timely book on this subject has not undertaken to go into the question of a popular referendum, except incidentally, but has confined his investigation chiefly to the parliamentary control of foreign policies, the only direction in which advance is practical at the present time. Although in gathering his information he uses secondary sources chiefly, he has assembled important facts or quoted suggestive comments from recognized authorities on the science of government, constitutional law or international relations. Instead of preparing a formal thesis from original documents and producing a dry piece of reading, he has written an entertaining political essay and brought his subject within the understanding of the average mature reader. His method is first to analyze and then to compare the political systems of Great Britain, France and the United States to show the relative measure of control exercised by the executive and legislative branches of government, together with the reaction on them of public opinion in deciding questions of foreign policy. His third classification, which he calls political control, is more or less identified with legislative control and probably ought not to have separate treatment.

After dwelling in detail on the characteristics of these systems, Dr. Chow summarizes his findings in a special chapter. He endeavors to show that under the French system there are three kinds of control over foreign policy—legislative, constitutional and political; that under the British system there is political and legislative control, but a lack of constitutional control; and that in the American system, although there is legislative and especially constitutional control, political control does not exist. In all three systems, however, there is legislative control. In France, as in Great Britain, the executive department of government has large discretionary powers, yet the legislative branch can in a measure influence foreign policy when voting necessary credit, as for example, in support of a declaration of war, the establishment of a legation, or the execution of a treaty. In the French system the legislature can also exercise its influence by means of a commission on foreign relations which may examine a treaty, incidentally discuss the merits of the policy involved in it, and finally recommend its acceptance or rejection. The legislative control, however, in both the British and French systems is relatively less than in the United States, and is due in part to the fact that in Europe, as is not the case in the United States, emergencies are likely to arise that make the immediate centralization of power in the executive department necessary. But with this centralization go disadvantages. It happens that in Great Britain, for

example, parliamentary control cannot usually be exercised until after a course of action adopted by a ministry has become an accomplished fact, and then perhaps too late in the day the ministry, if it has taken a wrong step, may be overthrown. The influence of the British sovereign, though limited in many ways, is still felt in shaping foreign policy, as was shown in the case of the intervention of Queen Victoria in the Trent affair and of the activity of King Edward VII in promoting a friendly understanding with France. The French President has large discretionary power, but he may be restrained indirectly by action of the legislature.

The fundamental difference between the British, French and American systems is that in the latter system the popular check consists mainly in constitutional limitations on the power of the President, while in the former it consists of political control exercised by parliament on the acts of a responsible ministry which is clothed with executive power. The Secretary for Foreign Affairs in Great Britain and France has considerably more independence in directing foreign policy than the American Secretary of State, who acts as the agent of the President and is his subordinate. Parliament in Great Britain and France is sooner affected by an expression of the popular will by ballot than is Congress in the United States, but even in those countries public sentiment is more active in the determination of internal than of external policies, as it is difficult for people to form a judgment on far off affairs of which they know nothing and in which their private interests are not affected. Unless a cabinet is seriously wrong, it is sure to receive in Parliament the support of the party it represents and will not be upset by a difference over a detail. Therefore if the party programme is carried out, the ministers may remain undisturbed even though their foreign policy is objectionable. The executive branch of government has an advantage over Parliament in the European system through the practise of secret diplomacy, for a parliament that is kept in ignorance of the true state of affairs cannot act as intelligently as it should, but the executive branch is never quite sure that it will have support when the true facts are known and votes of credit or approval upon which its policy must depend have to be taken.

In the system in use in the United States are some advantages which the writer points out for consideration. They are derived mainly from constitutional limitations on the executive power. Here, in the initial stages of a foreign policy, particularly in the making of a treaty, the authority is in the hands of the executive branch of the government. It can shape a policy in a treaty, but, by constitutional provision, a treaty must be referred to the Senate before it can become a law. This body therefore can act before rather than after the fact, as is so often not the case, for example in Great Britain. Here, in the United States, there is little chance of secrecy in treaty-making as the conditions under which a treaty is negotiated must be made known to the Senate. But the two-

thirds majority requirement which, in the writer's opinion, is too large, enables a minority to control a situation by compelling indefinite postponement or creating an impassé such as occurred in the discussion of the Treaty of Versailles.

Commenting on the participation of the Senate in treaty-making, the author considers it from one point of view illogical. A treaty once adopted with the approval of the Senate becomes the law of the land, but in case of other acts that become the law of the land both branches of Congress act. He raises the old question of submission of treaties to both branches of Congress for validity instead of to one of them only.

Another advantage of the American system to which he calls attention is that although in the United States the President has large personal influence, as shown in the administration of President McKinley when the United States participated in the rescue of the legations in Peking, in the issuance of the "open door" letter of Mr. Hay without legislative action, and in the attitude of President Wilson at first in keeping the United States neutral and then in bringing matters to a certain crisis that made recognition of a state of war by Congress necessary, the legislative branch, owing to constitutional checks, can on the whole hinder the chief executive from embarking on policies that are contrary to national sentiment and may thus prevent the country from becoming involved in undesirable alliances, protectorates or imperial ventures. The writer dwells upon the superiority of the idea of constitutional checks and concludes that if some day another great democracy should make a choice of systems to bring about increased legislative control of foreign policy it would choose the American system as the better for this purpose than either the British or the French.

Whether Mr. Chow is right in his criticism of the arrangement for the participation of the Senate and not of the House of Representatives also in the validation of a treaty, the debates and votes on the Treaty of Versailles revealed the fact that there is already a powerful element of legislative control representing the entire country in the American system, even though in matters of ratification it extends only to the Senate. Direct political control by ballot is also possible here at stated times and then may be as effective as in France or Great Britain. In a presidential election if a momentous question of foreign policy must be decided, as for example, the acceptance or rejection of a measure like the Covenant of the League of Nations and the Treaty of Versailles, the whole American people can pass judgment on the issue and thus give their mandate to the executive power.

JAMES L. TRYON.

International Law and the World War. By James Wilford Garner. Longmans, Green & Co.: London and New York. 2 vols. pp. 524 and 504. $24.00.

In this extensive work Professor Garner indulges in what, from his point of view, may properly be denominated a post mortem over such remains of international law applied to war as may be gathered up after the recent struggle. He reviews the multitudinous infractions of so-called laws of war committed by the Central Powers or by the Allies, and affecting, among other things, treatment of diplomatic and consular officers and of enemy aliens; enemy merchant vessels; transfer of merchant vessels to neutral flags; trade and intercourse with the enemy; war contracts; forbidden weapons; hostages; devastation of enemy country; submarine mines and maritime war zone; submarine warfare; defensively armed merchant vessels; bombardments; destruction of monuments; aerial warfare; treatment of prisoners; military government in Belgium; contributions; requisitions and forced labor; collective fines and community responsibility; deportation of civil population; German invasions of Belgium and other neutral territory; occupation of part of Greece by England and France; destruction of neutral merchant vessels; contraband; blockades; interference with mails; exportation of arms to belligerents; effects of war on international law and enforcement of international law in the future; beginning the whole discussion with an examination of what is called the status of international law at least with relation to war and its outbreak.

The whole work is a detailed study of morbid international pathology. In writing it, Professor Garner's labors may be of great value to those who are not particularly concerned in letting the dead past bury its dead. As a complete summing up of the varied forms of violation of common right, humanity and decency which nations indulge in once their tempers are aroused, Professor Garner's work has its place.

While doubtless Professor Garner's presentations with regard to particular facts, or series of facts, are generally sufficient, one notes an occasional lapse. For instance, referring to the case of Captain Fryatt, no stress is laid upon the fact that Fryatt was not shot by Germans upon being caught red-handed fighting capture. Instead, he was captured under entirely different circumstances, and made to suffer penalty for acts performed at a time then long past. Captain Fryatt's situation might have been properly compared with that of a spy who, if caught in the act of spying, could be instantly shot under the customs of war, but who, if captured later in the usual course of military operations, might not be treated otherwise than any other military enemy. Again his case could have been regarded as analogous to that of a blockade running vessel, which, by the same elusive customs, might be captured and condemned as prize if caught trying to break a

blockade, but which might not be troubled when thereafter engaged in commerce having no relation to the war. In other words, the supposed offense was ended by the fact that capture did not immediately follow its commission. In truth, Captain Fryatt's killing was an act of unadulterated vengeance.

In the view of the writer, the dimly appreciated fact lessening the importance of Professor Garner's learned and laborious work, is that properly speaking there are no laws of war having real existence. His travail is postulated, as it were, upon a shifting and uncertain basis with no solid rock of support in right or in binding and enforceable convention. True it is that treaties and Hague Conventions lay down what are assumed to be laws of war between the parties, and these documents are given the high sounding title of law, but they are not law though we may call them such till the "crack o' doom." They offer but the simulacrum of law, not pronounced by a superior, not based upon fundamental right, and not providing for their own enforcement. However we may paint them, they are shams, and smell of decay. "Though she may paint an inch thick, to this favor she must come."

Law, save for rules of convenience and for adjective procedure to make it effective, must be founded upon some ground-work of reason, in turn resting upon elemental principles of right. This may not be said of any of the so-called principles of international law as applied to war. These are habits or customs which may be, and, of course, are broken at will, according to the immediate apparent necessities of the parties concerned. Taking only the time to base a broad analogy upon a narrow instance, we may assume that a state can pass a law prohibiting fighting among its citizens. When it goes further and adds a proviso to the effect that if, notwithstanding, two or more citizens do fight, they shall not strike below the belt, we have in the proviso a fairly perfect analogy to the laws of war. If a treaty may say to the nations concerned that they must keep peace between themselves, and then follow with the statement: "But if you do violate this obligation you must conduct yourselves in a given manner," the treaty involves in its terms the same logical contradiction as would be involved in the prohibition in the imagined proviso of striking below the belt. Its vanity and foolishness would be obvious were it not for the labor of thought and the stupefying influence of things as they are.

War itself is forbidden by decency, humanity, and that broad principle which ought to allow, save under the most extraordinary circumstances, a man to live his own life as long as he may, and not to have it taken from him by the arbitrary whim or fiat even of a state.

We may not declare that the World War has given a death-blow to international law. It has not done so. Relations of right and justice must always exist between nations. The last war has simply disclosed the hollowness of our attempts to classify, under international law, what we term the

laws of war. Nomenclature changes no essential; it cannot make into law the necessary obscenity of war. The cruelties incident to that organized disorder we call war are not subject to external regulation.

> "In vain we call old notions fudge,
> And bend our conscience to our dealing;
> The Ten Commandments will not budge,
> And stealing will continue stealing."

And the quotation applies to other things than stealing.

Of course we are not concerned particularly in discussing in this review the right of a nation to defend itself. We may simply point out that in so doing, it of necessity rightfully or wrongfully acts as its own judge and executioner.

JACKSON H. RALSTON

International Law. A Treatise. By L. Oppenheim, M.A., LL.D. Vol. I. Peace. Third Edition. Edited by Ronald F. Roxburgh, Cambridge: Longmans, Green & Co. 1920. pp. 799.

The first edition of this great work appeared, the volume on "Peace," in 1905, on "War and Neutrality" in 1906. Professor Oppenheim brought out a second edition in 1912 and was engaged upon a new edition, which should exhibit the results of the World War, when his health broke down and his untimely death occurred October 7, 1919.

His practice in preparing this new edition was to work from day to day rewriting paragraphs, marking pages for revision and new incidents on the orderly leaves of his own copy. His notes came to an end in July, 1919, and when he died, but few chapters were found ready for the printer. Mr. Roxburgh has embodied the manuscript notes in the text, scrupulously avoiding unnecessary change. In accordance with the wishes of Mrs. Oppenheim and the publisher, he has brought the narrative down to the date of publication. (The date of the preface is June 29, 1920.)

Sections 50a and 50b, dealing with the World War and the Peace Conference, the editor has rewritten "with some guidance from the author's jottings." Sections 94a and 94b, as to "Self-Governing Dominions," had been roughly drafted by the author, but events moved so rapidly that the editor had to recast them. Sections 197a and 197b, on "Air and Aerial Navigation," had to be revised "to embody the new International Air Convention." The sections as to "International Commissions and Offices" have been rewritten in part "to incorporate recent events," as has, for like reason, section 476a as to "the Proposed International Prize Court and the Proposed International Court of Justice," and section 476b, as to the Permanent Court of Arbitration at The Hague has been amplified.

The list of law-making treaties and non-political unions has been revised

and corrected to accord with the action of the Peace Conference of 1919. Professor Oppenheim "had himself written the important sections explaining and discussing the League of Nations," but the editor has added the "section dealing with the Treaties of Peace and the position of Unions after the World War."

The work of the editor has been faithfully, modestly and intelligently accomplished. The volume is devoted to "Peace," and the forthcoming volume to "War." The latter, therefore, must deal with the precedents of the World War which, in the main, do not fit with the topics of Peace.

Professor Oppenheim was born and educated in Germany, but removed to Switzerland in 1891, and to England in 1895. In the latter country he married an English lady, daughter of Lieutenant-Colonel Cowan, and there he achieved his great career as lecturer on international law at the London School of Economics, and from 1908 until his death as Whewell Professor of International Law at Cambridge, in which he worthily succeeded his friend Westlake. He took and held the place of one of England's ripest and most learned publicists, standing loyally by his adopted country during the great war.

His profound acquaintance with the Continental, as well as the English and American authorities, prepared him for a unique service in the discussion of the problems of the years that have passed since his edition of 1912. It is a great loss that his lips are silent and his pen laid down.

On the subject which was thought so vital, the League of Nations, he had expressed himself somewhat fully in a little volume, *The League of Nations and its Problems,* published in 1919, and which he kindly sent to this writer. He there traces the generation of the plans for a world league, and expresses very cautious and hesitant belief in its successful operation.

The present volume devotes to this subject some thirty-seven pages. 1st, to a "Statement of the Birth and General Character of the League;" 2nd, "The Constitution of the League;" 3d, "The Functions of the League;" 4th, "Defects and Merits of the Constitution of the League." These defects, as stated by Professor Oppenheim, may be summed up as follows:

First, that the league was created by the Allied and Associated Powers, not by the free deliberation of all civilized states, and its acceptance by the Central Powers was made obligatory by the Treaties of Peace, and its council consists of representatives of the "Principal Allied and Associated Powers" and of four other Powers; yet, he states, that thirteen neutral states have joined the league (that number is now much greater) and the terms of the Covenant provide opportunity for remedying its defects by amendment; that it has been enabled to undertake numbers of functions required by the treaties and the resettlement of international affairs.

Second, Professor Oppenheim says objection to the predominance of the Great Powers in the Council of the League is unjustified; that those

Powers are the leaders in "The Family of Nations" and when action is required, they must provide such action, and that it is, therefore, right that they should be always represented and predominant in the Council; that the rule requiring unanimity prevents abuse of such predominance.

Third, that the objection that it fails to create a Super State is met by the fact that no single civilized state would have acceded to it if it had created such a Super State, and that any scheme for such creation is, in Professor Oppenheim's opinion, Utopian.

Fourth, that the objection that it is a league of governments and not of peoples is met by the fact that autocracy has almost disappeared and substantially all government is representative; that moreover each nation may select its representative in its own way.

Fifth, and lastly, that the objection that the League is not strong enough to secure peace (which, at the date of the present review, seems established quite beyond controversy) is based on a wrong presumption that the League was intended to be something like a Super State, whereas, it is nothing but "*the organized Family of Nations.*"

Dr. Oppenheim admits as real defects: 1st, that members may withdraw or be expelled from the League, and thus it may cease to represent the Family of Nations; 2nd, that there is no provision for a separate Council of Conciliation; 3d, that it does not make the settlement of judicial disputes, by an International Court of Justice, compulsory; 4th, the right of the Assembly of the League to advise the reconsideration by members of the League of treaties which have become inapplicable, and consideration of international conditions which may threaten the world's peace, he considers a misfortune and contends that as unanimity is required for this action, the large body of the Assembly is unfit for this function; 5th, the absence of a covenant requiring the Council to intervene if a belligerent violates fundamental rules of war, he counts a further fault.

However, Professor Oppenheim thinks that the League has inaugurated a new epoch in the development of mankind by organizing "*the Family of Nations.*" He thinks that "the absence of rigidity in the Constitution permits adaptation to future circumstances."

This reviewer cannot but reflect that it affords every convenience for injurious, as well as for salutory, modification.

It is almost two and a quarter years since our esteemed author wrote this discussion of the League. It seems somewhat trite, stale and perfunctory, at the present time. The phrase "*Family of Nations,*" which proved so attractive to Professor Oppenheim, indicates a relation of common affection which is about as obvious between the nations as between the carnivorous and the herbivorous animals. The months that have passed, since the passages were written by Professor Oppenheim, seem to have developed a considerable faculty in the League for debate and expenditure, the latter especially, upon its own officers and agents. It is difficult to point to many

"ripe fruits" it has produced, or even to any sure and reasonable hope of its growth in usefulness as the result of these fifty-two months. Professor Oppenheim's work, however, in its new edition, will be everywhere welcome, His first edition took almost at once the place of an accepted classic in the great branch of law with which it dealt.

It seems to this reviewer, however, that we must gratefully value it more as the work of a remarkable scholar, of untiring research and vast and varied learning, lucidly presented, than as the creation of a constructive thinker in advanced lines as to the reconstruction of international relations.

Oppenheim's volumes, in a measure, replaced the older work of Hall, always so compendious and satisfactory, except where American views or interests were discussed. There a hostile bias always appeared from which Oppenheim is wholly free. In one respect the present edition falls far short of its predecessors. The paper on which it is printed is vastly inferior, which must be laid to the changes in the paper market, and not to the niggardliness of the publisher.

CHARLES NOBLE GREGORY.

Histoire Diplomatique du Traité de 1839 (19 Avril, 1839). By Alfred de Ridder. Bruxelles et Paris: Vromant & Co. 1920. pp. 399.

At a time when the whole world is absorbed in discussing what happened during the negotiations of the Peace Treaty, it is *à propos* to consider the diplomatic history of that famous treaty which proved to be something more than a scrap of paper, Von Bethmann Hollweg to the contrary notwithstanding. M. de Ridder has given us a very readable and careful study of the incidents and negotiations preceding the signature of the treaty of April 19, 1839, and at the same time portrays the character of Count Barthélémy de Theux de Meyland who, as M. de Ridder remarks, clearly reveals himself in all these incidents in which, as Minister for Foreign Affairs, he took so prominent a part. A preceding volume, entitled *La Belgique et la Prusse en Conflit*, covered the early years of the ministerial career of M. de Theux, when Belgium by the aid of France and England was established as an independent state. But in the two or three years preceding the signature of the treaty of 1839 de Theux was himself responsible for the direction of the negotiations which definitely settled the terms of separation from Holland. After we have read the recital of how he carried out this office, we must agree with M. de Ridder that it would have been impossible to have obtained from the Powers terms more favorable to Belgium (p. 9).

The work is particularly valuable because M. de Ridder as a high official of the Belgian Foreign Office has had access to the documents deposited there. He was also fortunate enough to be supplied with others, especially the archives of the Count de Theux for the period in question. The

policies and characteristics of Leopold I, Palmerston, Metternich, and others are disclosed in the account of the conferences and in the interchange of notes. The Skrynecki affair is a particularly instructive episode of diplomacy. King Leopold of Belgium was sufficiently ill-advised and inconsiderate as to appoint General Skrynecki to a high command in the Belgian army, without consulting his Minister for Foreign Affairs (p. 312 f.). Skrynecki was a Polish refugee established at Prague, and Metternich at once took umbrage and peremptorily demanded his dismissal. With dignity and firmness de Theux refused to humiliate his country, yet was careful to do nothing to irritate Metternich or the Prussian Government, which supported the Austrian statesman at every move. Who after reading this account will assert that Metternich showed himself the equal of de Theux in the art of diplomacy? Preëminent for integrity of character and practical judgment, Count de Theux stands forth nobly portrayed in this his fitting monument.

ELLERY C. STOWELL.

The Truth about the Treaty. By André Tardieu. Indianapolis: Bobbs-Merrill Co. 1921. pp. 473. $4.00.

> "France has taken the Treaty of Peace seriously, just as she took the war. If others have done otherwise, is France to blame?" (Page 431).
>
> "If France is not to doubt England, she must feel that England does not attach less importance to the enforcement of the peace than she herself." (Page 452.)

Casual phrases often reveal an author's real preoccupations more clearly than formal and deliberate argument. M. Tardieu is apprehensive as to the durability of the fabric woven by the *Parcæ* of Versailles. He seems to feel that in the United States the emphasis on nonparticipation in European affairs may, after all, have been something more than a reaction from the strain of the war; while Great Britain, he fears, is slipping back to her tradition of favoring the second rate, and distrusting the first rate European Powers. The "Anglo-Saxons," therefore, have to be spoken to frankly and resolutely. M. Tardieu has, consequently set himself the task of counteracting these tendencies in the United States and Great Britain. He has prepared a detailed analysis of the treaty, not so much from the juridical point of view, as from that of the circumstances surrounding the adoption of its chief provisions. After stating the origin of each principle upon which the treaty was drawn, he traces its fate throughout the Conference. His narrative is interesting and at times absorbing. There are many picturesque personal details. A number of documents are published, and the existence of even more valuable ones revealed. Much statistical matter is presented, not often, however, with adequate bibliographical appar-

atus, while in some instances statements, and even whole tables, fail to indicate clearly which of the various statistical values is intended to be understood,—cost, intrinsic or replacement.

M. Tardieu vigorously repels the enemies of the treaty in France. He is, however, more concerned with the state of opinion in the English-speaking countries. He appeals for their political, financial and moral unity with France in enforcing the treaty. Each of them,—France, the British Empire and the United States,—was an indispensable factor in winning the war, he contends; each is equally indispensable in enforcing the peace. Each sacrificed life and property and happiness to an incredible extent to preserve law and order, the sanctity of treaties, and the rights of small nations. Neither the British Channel nor the Atlantic Ocean, but the Rhine is the "frontier of freedom." Neither England nor the United States can be secure unless France is secure; and France cannot be secure unless Germany is compelled to repair the damage she has done—as far as it can be repaired. Enforcement of the treaty, then, is the paramount task of the three democratic Powers for their own safety. But it is also their solemn duty, because of the moral obligations of each to the others arising from the trusteeship for the law and peace of the world, which they were forced to assume.

Why, then, in the face of both duty and interest, do the United States and England fail to give evidence of the political, economic and moral unity which is M. Tardieu's ideal? Is it because they interpret their duty and interest differently? Is it because both, perhaps one particularly, of them regard their interests as not preëminently European, but Asiatic, American, African,—anything else first, and then European? Can it be that the persistence of the policy analyzed more than a generation ago by Sir John Seeley with such refreshing frankness is based on a settled conviction on the part of the British Government as to what is really the British interest on the continent of Europe?

M. Tardieu shows himself a most discerning and astute student of politics. He applies with equal dexterity the methods and approaches of the journalist, the lawyer, the financier, the diplomatist. He must, therefore, have long since perceived that nations are actuated by convictions as to their interests, no matter in what formulæ those convictions are expressed, if expressed at all, and no matter how mistaken their comprehension of the real nature of their interests.

Whatever may be the extent to which M. Tardieu perceives this fundamental principle at work in determining the policy of England toward the enforcement of the treaty, he will certainly realize its force in the case of the United States, especially if his own book is given any widespread circulation. The chief effect of his volume will be precisely to reinforce the attitude of non-participation in European affairs, which he correctly believes to have been greatly strengthened. It will not be because his argument

lacks force, sincerity or eloquence, but because it leaves a very vivid impression of the hopeless and ever more bitter economic and political involvement of Europe. While his appropriate and gracious appeal to sentiment may stir sympathy and gratitude, his picture of the financial situation of Europe will terrify our people and defeat any hope of enlisting their determined support of a policy of participation in the "guarantees" of treaty enforcement. Just as M. Tardieu remarks that France is not to blame for having been fifteen centuries exposed to the invasion of the lawless millions of Germany, and having now to enforce peace in Europe, so will the people of the United States be likely to declare that they are not to blame for having been happily isolated from Europe, and not having now to underwrite the financial fulfillment of the Treaty of 1919. The conviction that non-participation is the correct policy admittedly is strong; it will be strengthened rather than diminished by M. Tardieu's brief.

C. E. McGuire.

Foreign Rights and Interests in China. By Westel W. Willoughby. Baltimore: The Johns Hopkins Press. 1920. pp. xx, 594.

The purpose of Dr. Willoughby's volume as stated in the preface is "to provide a statement of the rights of foreigners and the interests of foreign States in China as they are to be found stated in treaties with or relating to China or in other documents of an official or quasi-official character." That there was a pressing need for such work as the author remarks, few will question, despite the valuable work covering portions of this field which had been previously done by such publicists as H. B. Morse, V. K. Wellington Koo, and M. T. Z. Tyau, to whom Dr. Willoughby gives due credit.

Dr. Willoughby is eminently qualified as a scholar, publicist, former Legal Adviser to the Chinese Government at Peking and experienced traveler in the Orient for the task to which he set himself. The result of his work is, in the judgment of the reviewer, worthy alike of the subject and the author. Dr. Willoughby has prepared a well-balanced, accurate, and thoroughly useful and usable volume which no one who seriously deals with the subject with which he treats can afford to be without. The scope of the work embraces such topics as Extraterritoriality, The Rights of Foreign Merchants, Patent Rights, Foreign Corporations in China, Settlements and Concessions, The Open Door, Spheres of Interest, The Japanese in Manchuria, Shantung, etc., Opium, China's Foreign Debts, and Railway Loans and Foreign Control.

The volume is expository, not argumentative. It is a law book, not a work of political science. As the author states in his preface, the "volume makes no claim to describe present political conditions in China, nor, upon

the side of international law and diplomacy, to estimate the ethical character or practical wisdom of the policies which the several Treaty Powers have pursued in their dealings with China." It must have cost the learned author much self-denial to adhere to the policy thus laid down and to refrain, as he has almost always succeeded in doing, from comment upon the story told by the documents. It is to be hoped that Dr. Willoughby will in the near future find time for the preparation of the further volume suggested by his preface which will comment upon the documentary evidence which is collected and arranged in the present work. However, the old adage that a case well stated is more than half won applies to the present volume. The documents are so well arranged and summarized that in large part they state their own case and assist the reader to draw his own conclusions even with respect to questions of policy.

An especially interesting chapter, and one in which the learned author comes measurably near to overstepping the limitations against comment which he has placed upon himself, is the chapter dealing with "Japan's 'Special Interests' in China,—The Lansing-Ishii Agreement." The facts and circumstances surrounding this interesting diplomatic document which give it color are set forth in detail, and Secretary Lansing's testimony regarding it before the Committee on Foreign Relations of the United States Senate is fully and fairly summarized. While the whole chapter should be carefully read by anyone interested in understanding the Lansing-Ishii Agreement, the general conclusions of the author appear to be fairly inferable from his statements that "giving to the agreement the construction which the Secretary [Mr. Lansing] has given to it there would, in fact, appear no reason why, upon the part of the United States, it should not have been signed," (p. 438) but that "the terms of the agreement are so indefinite as to lay the basis for, rather than to prevent future suspicion and discord," (p. 436) and finally "thus a certain amount of mystery still surrounds the Lansing-Ishii Agreement" (p. 437).

In his introduction the learned author says "the writer has not deceived himself nor does he wish to mislead his readers with the idea that he has made a complete statement of the situation." Such a statement would in any event disarm criticism as respects a matter here and there which the reader would like to see more fully treated, but bearing in mind the limitations imposed by Dr. Willoughby's plan, there is in fact only one chapter which in the opinion of the present reviewer is fairly open to criticism on the ground of inadequacy of treatment, and that is the chapter on "Mongolia and Tibet." This remark applies particularly to the discussion of Tibet, which is treated in less than four pages, or at considerably less length than the same subject is dealt with in Dr. C. C. Wu's memorandum on "The Leading Outstanding Cases Between China and the Foreign Powers" contained in the appendix to B. L. Putnam Weale's *The Fight for the Republic in China*. Probably this slender treatment is due to the difficulty

experienced by Dr. Willoughby in securing authentic documentary evidence with respect to the Tibetan question. This difficulty appears to result from the failure of the Chinese Government to give the facts of the Tibetan negotiations to the world in the same way that the facts of the negotiations with Japan growing out of the Twenty-One Demands were given to the world. This is not to suggest that the Tibetan situation and the situation in Shantung and Manchuria are identical or even comparable, but it is meant to suggest that fairness requires that neither China nor the United States, which means neither Chinese nor American public opinion, should be "respectors of persons"—or countries, and that the British "forward" policy in Tibet should be subjected to the same impartial examination upon its merits in the light of all the evidence as Japan's "Black Dragon" policy in Shantung and Manchuria and in all China.

It is to be hoped, particularly in view of the interest in Chinese affairs sure to result from the conference on the Limitation of Armament and Pacific Problems now about to convene, that Dr. Willoughby will shortly prepare a new edition of his book and that he will endeavor to secure and publish the documentary evidence necessary to a complete understanding of the Tibetan question. The value of Dr. Willoughby's book is greatly enhanced by his references to Mr. J. V. A. MacMurray's *Treaties and Agreements With and Concerning China,* 1894-1919, which are referred to in galley proof. A new edition would have the further advantage of enabling page references to be made to those indispensable volumes.

In conclusion, it is not too much to say that all students of Chinese affairs, whether they pursue the subject from a scholarly or professional viewpoint, are under genuine obligation to Dr. Willoughby for his book.

WILLIAM CULLEN DENNIS.

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